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IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

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III

LOCAL GOVERNMENT IN ILLINOIS

AND

LOCAL GOVERNMENT IN PENNSYLVANIA

"It is not creditable to us as an educated people that while our students are well acquainted with the state machinery of Athens and Rome, they should be ignorant of the corresponding institutions of our own forefathers: institutions that possess a living interest for every nation that realises its identity, and have exercised on the well-being of the civilised world an influence not inferior certainly to that of the Classical nations." — *Stubbs, Select Charters.*

JOHNS HOPKINS UNIVERSITY STUDIES
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HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

III

LOCAL GOVERNMENT IN ILLINOIS

By ALBERT SHAW, A. B.

Reprinted from the *Fortnightly Review*

AND

LOCAL GOVERNMENT IN PENNSYLVANIA

By E. R. L. GOULD, A. B.

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LOCAL GOVERNMENT IN ILLINOIS.

It is difficult to approach the study of the political systems to-day in operation in the new Western States without a feeling that they are wholly artificial and superimposed inventions rather than growths. Such preconceptions must in good measure yield before a study of the simple facts. Artificial and mathematical as is that checker-board system of local geography which a township map of Illinois depicts, it nevertheless furnishes metes and bounds for local governments which are neither novel nor experimental, but are transplanted scions from older growths of Anglo-Saxon communal life, which have already taken firm root in prairie soil and have easily adapted themselves to the modifying influences of the new environment. It must be remembered that the prairie farmer is descended from people who for centuries have had the habit of attending to their own local affairs; and that with all his fondness for paper constitutions and minute written laws, he is but re-enacting, under modified forms, the social arrangements under which the Anglo-Saxon usually insists upon living, wherever you transplant him. The safeguards and maxims of the common law are as truly the heritage of the young Anglo-Saxon in the Mississippi Valley as of his cousin on the Severn or the Thames.

The precise forms under which the people of Illinois are to-day governing themselves have been largely shaped by certain facts in the history of the State, and will be best understood in the light of a preliminary historical sketch.

Migration from the Atlantic States to the interior and Western States has always followed the parallels of latitude.

Illinois is a remarkable illustration of this tendency. A glance at the map will show that the State's greatest length (nearly four hundred miles) is from north to south; and that the parallels which mark its northern and southern limits include the sea-board States from New Hampshire to North Carolina. Naturally, then, Southern Illinois derived its population from Virginia and other Southern States, while Northern Illinois was chiefly settled from Massachusetts and other New England States. The inquiry into the habits and opinions of government which these people brought with them to their new homes must carry us a step further back.

M. de Tocqueville, who made his survey of American institutions at a time when the migratory tide was setting strongly toward Illinois, and when her institutions were in a formative stage, says that "two branches may be distinguished in the Anglo-American family, which have grown up without entirely commingling—the one in the north, the other in the south." New England had been colonized by men who were, in the language of the same writer, "neither lords nor common people, neither rich nor poor." A people so similar in education, so agreed in religious beliefs, and so equal in property and in social rank, formed the best material for a pure democracy that the world had ever seen. Gradually they covered New England with a congeries of small self-governing agricultural communities, each with a strongly individual character, and bearing some striking resemblances to the ancient Teutonic "mark." Qualifications for the exercise of political privileges were not onerous, and the whole body of qualified citizens were accustomed to assemble in "town meetings," where they elected officers, discussed neighborhood interests, made laws, and voted taxes. Even when, after the separation from England, the State governments had become firmly established, the towns were still permitted to make and administer most of those laws which were of immediate concern to them. The legislature of the State was composed of representatives from the towns, and made laws which affected the towns only in matters of common interest. Such State laws, furthermore, were executed

by the town officers within their respective jurisdictions. The New England county was an aggregation of towns to constitute a judicial district, wherein might be maintained a judiciary establishment midway between the justices' courts of the towns and the superior court of the State. The county had no very distinct political character. As a whole, the New England system was one highly localized both in administration and in authority.

In Virginia the structure of society was radically different. Opposed to the small freeholds of New England, we find from the beginning a tendency to mass the land in large estates. The institution of slavery, which always dishonors and degrades free labor, forbade the growth of a strong middle class. The wealthy planter had no interest in common with his tenants and servants. The communal life of village or neighborhood could not develop under such an industrial system. The planter was a sort of feudal lord on his own domain, and local self-rule by majorities found no place. We find territorial divisions, but chiefly for convenience in limiting the jurisdiction of courts, collecting State taxes, and holding State elections. The State Government was the centre both of authority and administration. The Governor appointed all justices of the peace throughout the State. The justices residing in any county constituted a county court, which, in addition to judicial functions, was intrusted with the management of all the county business. This court co-operated with the Governor in appointing sheriff and coroner. It appointed constables and road commissioners, levied taxes, and when the State had made some provision for schools, the county court appointed the board of school commissioners. A landed aristocracy thus became the State's fiscal agents, the local magistrates, and the sole managers of county affairs. The subdivisions of the county for elections, schools, and care of paupers, were mere partitions of territory, without political significance.

These two diverse systems of New England and Virginia were destined to meet and to strive for supremacy in Illinois.

Though Illinois forms a part of the vast territory claimed

by the British Crown in virtue of Cabot's voyage of 1498, and was, in part, included in the original Virginia grant, it nevertheless was in possession of the French until finally ceded to England at the close of the "French and Indian War," in 1763. French peasants to the number of three thousand had formed village settlements in the southern part of the State, on the Illinois and Mississippi Rivers. For fifteen years they maintained a military government, with headquarters at the French village of Kaskaskia. In 1778, during the Revolutionary War, the State of Virginia sent out a little force of men, who made their way through the wilderness, took Kaskaskia, and readily persuaded all the French villagers to swear allegiance to Virginia. That enterprising commonwealth proceeded to organize Illinois as a Virginia county, including under that name the entire country north of the Ohio and east of the Mississippi. Although before a decade had elapsed Virginia and the other individual States had ceded their western territories to the United States, Illinois had already received some impress of Virginian forms of government.

Under the famous "Ordinance of 1787," Congress established a provisional government for the country north of the Ohio, which now took the name of the "Northwestern Territory." This charter did not provide for municipal corporations. It allowed the people a representative assembly, and exacted a very low property qualification from electors. While the Legislature was permitted to make all needful laws, the Governor, himself appointed by Congress, was authorized by the ordinance to appoint all minor officers throughout the territory. This, manifestly, was after the Virginian pattern, and was, in fact, the work of no less a Virginian statesman than Mr. Jefferson. But, while the ordinance made no provision for the immediate exercise of local self-government, it did establish principles which formed a basis for the healthy municipal life of a later period. It ordained free trade in land, and the law of partible inheritance by which all the children of an intestate were equal heirs. Add to these two the provision forever excluding slavery,

and a landed aristocracy becomes impossible—a citizenship of small freeholders is infallibly guaranteed. Among other rights forever confirmed to the people by this enlightened Charter of 1787, we find freedom of opinion and worship, trial by jury, the benefit of the writ of *habeas corpus*, the judicial methods of the common law, and proportionate representation.

One by one Ohio, Michigan, and Indiana were carved from the Northwestern Territory, till, in 1809, Illinois was erected into a territorial government under its present name. In 1818 it was allowed to form a State constitution, and passed from its political wardship to the status of a self-controlling commonwealth. Meantime, immigration had been almost exclusively directed to the southern part of the State. The early French settlements, and Virginia's temporary connection with them, seem to have been the determining influences in producing a fact which is the key to much of the legislative history of the State, viz., that the southern half of the State was settled earliest, and that these pioneers were from Virginia, Kentucky, and the Carolinas. It was they who formed the Constitution of 1818, and the instrument bears witness to the origin of its authors. It is true that these sturdy frontier-men were not from aristocratic ranks of Southern society. They may be said to represent that revival of democracy and of the old Anglo-Saxon spirit which the second war with England awakened in the lower classes of the South; and their exodus to the free soil of the wilderness may be characterized as a protest against the semi-feudalism that was crushing them in Virginia. Nevertheless, they were Southern men, accustomed to Southern forms of government, and intensely prejudiced against anything that savored of New England.

At the time of its admission to the Union, Illinois was divided into fifteen large counties. The Constitution of 1818, and laws made pursuant to it, placed the entire business management of each county in the hands of a court of three County Commissioners. We have here a reproduction of the Virginia Court, with two important differences, however:

First, these Commissioners were elected by the people of the county; and, second, by a process of differentiation, this Illinois Court had no judicial functions, the county judiciary being made a distinct tribunal. The people also chose in every county a sheriff, coroner, clerk, treasurer, surveyor, and recorder. The Commissioners appointed election judges, road supervisors, and overseers of the poor, dividing the county into districts for these purposes. Every election precinct was entitled to two justices of the peace, who were appointed by the Governor of the State. After 1826, however, the people of each precinct were allowed to elect their justices. The Commissioners had a narrow range of discretionary power, but there was no power given to communities to control local affairs, or to enact by-laws in promotion of neighborhood interests.

But even at this time there had been planted in Illinois, and throughout the whole West, a germ capable, under right conditions, of developing a highly organized township system. In dividing and designating the public domain, the Congress of the United States had early adopted the system of survey into bodies six miles square, and had given these divisions the New-England name of *townships*. For purposes of record and sale, each township was divided into thirty-six sections a mile square, and these were further subdivided. Every man held his land by a deed which reminded him that his freehold was part of a *township*, and there is much even in a name. But further than this, the United States had given to the people of every township a mile of land, the proceeds of which should be a permanent township school-fund. To give effect to this liberal provision, the State enacted a law making the township a body corporate and politic for school purposes, and authorizing the inhabitants to elect school officers and maintain free schools. Here, then, was a rudiment of local government. As New-England township life grew up around the church, so western localism finds its nucleus in the school system. What more natural than that the county election district should soon be made to coincide with the school township, with a school-house for the voting-

place? or, that justices of the peace, constables, road supervisors, and overseers of the poor, should have their jurisdictions determined by those same township lines?

The admission of Missouri to the Union as a slave State, under the "Compromise Bill" of 1820, seems to have turned the tide of southern migration toward that quarter; while from that time the free State of Illinois began to receive constant and strong accessions from New England and New York. The northern counties particularly were filled with swarms from the eastern hive. There resulted a sectional bitterness and strife in legislative councils, northern ideas gradually becoming dominant. The struggle culminated in the convention which met in 1847 to revise the constitution, and in good measure ceased with the adoption of the revised instrument the following year. This constitution met the question of local government with a compromise. It provided that the Legislature should enact a general law for the political organization of townships, under which any county might act whenever a majority of its voters should so determine. Under the Act accordingly passed by the General Assembly, all the northern counties proceeded promptly to adopt township organization, while the southern counties retained their old county system described above. This was one of those happy, but unusual, compromises whereby both parties gain their principle. It was rendered possible by the distinctly sectional line of demarcation which separated the two elements of population. In Ohio and Indiana the same diverse elements of population had been more thoroughly commingled; and their "compromise system" was the outcome of mutual concession—a hybrid affair, in which township organization was very limited and imperfect.

The form of township government adopted by the Illinois Legislature was a modification of the New England system, changes being made to meet western conditions. It may be regarded as the model system of the Union. One by one the southern counties of the State have become converted to it, until at the present time only about one-fifth of the one hundred and two counties in Illinois cling to the old county

system. Without comment on the minute changes made in the course of thirty years' legislation, we may pass to a view of the local institutions as they are now in operation.

When the people of a county have voted to adopt the township system, the commissioners proceed to divide the county into towns, making them conform with the congressional or school townships, except in special cases. Every town is invested with corporate capacity to be a party in legal suits, to own and control property, and to make contracts. The annual town-meeting of the whole voting population, held on the first Tuesday in April for the election of town officers and the transaction of miscellaneous business, is the central fact in the town government. The following is a summary of what the people may do in town-meeting: They may make any orders concerning the acquisition, use, or sale of town property; direct officers in the exercise of their duties; vote taxes for roads and bridges, and for other lawful purposes; vote to institute or defend suits at law; legislate on the subject of noxious weeds, and offer rewards to encourage the extermination of noxious plants and vermin; regulate the running at large of cattle and other animals; establish pounds, and provide for the impounding and sale of stray and trespassing animals; provide public wells and watering-places; enact by-laws and rules to carry their powers into effect; impose fines and penalties, and apply such fines in any manner conducive to the interests of the town.

The town officers are a supervisor, who is *ex-officio* overseer of the poor, a clerk, an assessor, and a collector, all of whom are chosen annually; three commissioners of highways elected for three years, one retiring every year; and two justices of the peace and two constables, who hold office for four years.

On the morning appointed for the town-meeting, the voters assemble, and proceed to choose a moderator, who presides for the day. Balloting for town officers at once begins, the supervisor, collector, and assessor acting as election judges. Every male citizen of the United States who is twenty-one

years old, who has resided in the State a year, in the county ninety days, and in the township thirty days, is entitled to vote at town-meeting; but a year's residence in the town is required for eligibility to office. At two o'clock, the moderator calls the meeting to order for the consideration of business pertaining to those subjects already enumerated. Everything is done by the usual rules and methods of parliamentary bodies. The clerk of the town is secretary of the meeting, and preserves a record of all the proceedings. Special town-meetings may be held whenever the supervisor, clerk, and justices, or any two of them, together with fifteen voters, shall have filed with the clerk a statement that a meeting is necessary, for objects which they specify. The clerk then gives public notice in a prescribed way. Such special meetings act only upon the subjects named in the call.

The supervisor is both a town and a county officer. He is general manager of town business, and is also a member of the County Board, which is composed of the supervisors of the several towns, and which has general control of the county business. As a town officer, he receives and pays out all town money, excepting the highway and school funds. His financial report is presented by the clerk at town-meeting. The latter officer is the custodian of the town's records, books, and papers.

The highway commissioners, in their oversight of roads and bridges, are controlled by a large body of statute law, and by the enactments of the town-meeting. Highways are maintained by taxes levied on real and personal property, and by a poll-tax of two dollars, exacted from every able-bodied citizen between the ages of twenty-one and fifty. It may be paid in money, or in labor under the direction of the commissioners. One of the commissioners is constituted treasurer, and he receives and pays out all road moneys.

The supervisor acts as overseer of the poor. The law leaves it to be determined by the people of a county whether the separate towns or the county at large shall assume the care of paupers. When the town has the matter in charge, the overseer generally provides for the indigent by a system

of out-door relief. If the county supports the poor, the County Board is authorized to establish a poor-house and farm for the permanent care of the destitute, and temporary relief is afforded by the overseers in their respective towns, at the county's expense.

The Board of Town Auditors, composed of the supervisor, the clerk, and the justices, examine all accounts of the supervisor, overseer of poor, and highway commissioners; pass upon all claims and charges against the town, and audit all bills for compensation presented by town officers. The accounts thus audited are kept on file by the clerk for public inspection, and are reported at the next town meeting.

The supervisor, assessor, and clerk constitute a Board of Health. The clerk records their doings, and reports them at the meeting of the town.

No stated salaries are paid to town officers. They are compensated according to a schedule of fixed fees for specific services, or else receive certain *per diem* wages for time actually employed in official duties. The tax-collector's emolument is a percentage.

The Justices of the Peace have jurisdiction in minor criminal cases, in civil suits, when the amount in controversy does not exceed the value of two hundred dollars, and in all actions brought for violation of city or town ordinances.

For school purposes, the township is made a separate and distinct corporation, with the legal style, "Trustees of Schools of Township —, Range —," according to the number by which the township is designated in the Congressional Survey. The School Trustees, three in number, are usually elected with the officers of the civil township at town-meeting, and hold office for three years. They organize by choosing one of their number President, and by selecting some fourth person for School Treasurer, who shall also be, *ex-officio*, their secretary. They have authority to divide the township into school districts. It must be remembered that the township is exactly six miles square. It is the custom to divide it into nine districts two miles square, and to erect a school-house near the centre of each. As the county roads

are in most instances constructed on the section lines—and therefore run north and south, east and west, at intervals of a mile—the traveller expects to find a school-house at every alternate crossing. The people who live in these sub-districts elect three school directors, who control the school in their neighborhood. They are obliged to maintain a free school for not less than five nor more than nine months in every year, are empowered to build and furnish school-houses, hire teachers, and fix their salaries, and determine what studies shall be taught. They may levy taxes on all the taxable property in their district, but are forbidden to exceed a rate of two per cent. for educational or three per cent. for building purposes. They certify to the township school treasurer the amount they require, and it is collected as hereafter described. This last-named officer holds all school funds belonging to the township, and pays out on the order of the Directors of the several districts.

The township funds for the support of schools arise from three sources. (1) The proceeds of the school lands given by the United States Government, the interest from which alone may be expended. (2) The State annually levies on all property a tax of one-fifth of one per cent., which constitutes a State school fund, and is divided among the counties in the ratio of their school population, and is further distributed among the townships in the same ratio. (3) Any amount needed in addition to these sums is raised by taxation in the districts under authority of the directors.

All persons between the ages of six and twenty-one years are entitled to free-school privileges. Women are eligible to every school office in the State, and are frequently chosen directors.

The average Illinois county contains sixteen townships. The county government is established at some place designated by the voters, and called the "county seat." The corporate powers of the county are exercised by the County Board, which in counties under township organization is composed of the several town supervisors, while in other counties it consists of three commissioners elected by the

people of the whole county. The Board manage all county property, funds, and business; erect a court-house, jail, poor-house, and any necessary buildings; levy county taxes, audit all accounts and claims against the county, and, in counties not under township organization, have general oversight of highways and paupers. Even in counties which have given the care of highways to the townships, the County Board may appropriate funds to aid in constructing the more important roads and expensive bridges. The proceedings of the Board are recorded by the County Clerk, who also draws orders on the Treasurer for all claims which they have audited and allowed. In his office, official bonds and other important papers are filed and recorded.

The treasurer, sheriff, coroner, and surveyor are county functionaries, who perform the duties usually pertaining to their offices. The County Superintendent of Schools has oversight of all educational matters, advises town trustees and district directors, and collects complete school statistics, which he reports to the County Board, and transmits to the State Superintendent of Public Instruction.

Every county elects a judge, who has full probate jurisdiction, and appoints administrators, executors, and guardians. He also has jurisdiction in civil suits at law involving not more than \$1,000, in such minor criminal cases as are cognizable by a justice of the peace, and may entertain appeals from justices' or police courts. The State is divided into thirteen judicial districts, in each of which the people elect three judges, who constitute a Circuit Court. The tribunal holds two or more sessions annually in each county within the circuit, and is attended at every term by a grand and a petit jury. It has a general original jurisdiction, and hears appeals from the County Judge and from Justices' Courts. To complete the judicial system of the State, there are four Appellate Courts and one Supreme Court of last resort.

Taxes, whether for State, county, or town purposes, are computed on the basis of the assessment made by the Town Assessor, and are collected by the Town Collector.

The assessor views and values all real estate, and requires from all persons a true list of their personal property. The assessor, clerk, and supervisor constitute a Town Equalizing Board, to hear complaints, and to adjust and correct the assessment. The assessors' books from all the towns then go before the County Board, who make such corrections as shall cause valuations in one town to bear just relation to valuations in the others. The County Clerk transmits an abstract of the corrected assessment of the county to the Auditor of State, who places it in the hands of a State Board of Equalization. This board adjusts valuations between counties. All taxes are estimated and collected on this finally corrected assessment. The State authorities, the county board, the town supervisors, the highway commissioners, the township school trustees, and the proper officers of incorporated cities and villages, all certify to the county clerk a statement of the amount they require for their several purposes. The clerk prepares a collection book for each town, explaining therein the sum to be raised for each purpose. Having collected the total amount, the collector disburses to each proper authority its respective quota.

In all elections, whether for President of the United States, representatives of Congress, State officers, or county officers, the township constitutes an election precinct, and the supervisor, assessor, and collector sit as the election judges.

The words "town" and "township," as they occur in this article, signify a territorial division of the county, incorporated for purposes of local government. There remains to be mentioned a very numerous class of municipal corporations known in Illinois statutes as "villages" and "cities." A minimum population of three hundred, occupying territory not more than two square miles in extent, may, by popular vote, become incorporated as a "village," under provisions of the general law. Six village trustees are chosen, and they make one of their number president, thereby conferring on him the general duties of a mayor. At their discretion, the trustees appoint a clerk, a treasurer, a street commissioner, a

village constable, and other officers, as they deem necessary. The people may elect a police magistrate, whose jurisdiction is equal to that of a justice of the peace. When a territory not more than four square miles in extent contains at least one thousand inhabitants, the general law provides for organization and incorporation as a "city." Its government will consist of a mayor and aldermen, who constitute the city council. Cities whose population does not exceed three thousand, are divided into three wards, each ward electing two aldermen. The number of wards and aldermen increases in the ratio of population. Mayor and aldermen are elected for two years. The mayor has a veto on the ordinances of the council, though he may be overruled by a two-thirds vote. The council controls a wide range of subjects, which are specified in the statutes of the State. They manage the city's finances, appropriating money, levying taxes, and borrowing money—though the city's total indebtedness may never exceed five per cent. of its assessed valuation. Their authority extends to streets, gas and water supply, parks, harbors, markets, cemeteries, public amusements, the liquor traffic, police and police courts, jails and workhouses, the fire department, and numerous other city interests. They have power to make ordinances, and affix penalties, not exceeding six months' imprisonment, or a fine of two hundred dollars. Other city officers vary with the population, and need not be enumerated.

These incorporated villages and cities remain parts of the civil township, and share in the burdens and privileges of town government. They also remain parts of the school township, and are subject to the general provisions of the school law, excepting that in school districts containing more than two thousand inhabitants the three district directors are superseded by a board of education consisting of six members, and of three additional members for every ten thousand of additional population. Such districts must support schools from six to ten months in the year, may be divided into sub-districts, and may employ a superintendent of schools.

Such is a synopsis of local self-government in Illinois; and such, with more or less important differences, are the minor political institutions of nearly every State in the Union. Without a high conception of their influence no just estimate of the American character is possible. They have been the training-school for popular rule and representative institutions. They have acquainted the masses with principles of practical politics, and have given them that "habit of political debating and acting which is essential to the training of intelligent and useful citizens." The township system, Old England's best gift to the nation, has always been the groundwork and basis of democracy in America.

LOCAL SELF-GOVERNMENT IN PENNSYLVANIA.

Few perhaps fully realize the importance of a comprehensive study of local institutions. The centralizing tendencies of the present time are so strong, that the attention of the student of political science is apt to be concentrated upon federal rather than on local authority. He is prone to overlook the fact that the nation is a highly composite organism of which the state, the county, and the township, are subordinate, but very essential members. He is liable to forget that an inadequate or improper performance of functions by the latter is attended by an infusion of disorder, which interrupts the harmonious workings of the whole.

The scope of the present paper will not extend beyond a sketch of those three departments of local management embraced under the heads of Rates and Levies, Roads and Bridges, and the Poor. The early administration of colonial justice has already been treated in an excellent essay on the "Courts of Pennsylvania in the 17th Century," by Mr. Lawrence Lewis, Jr., while the question of Public Schools will be reserved for future discussion.

Before proceeding to give a minute description of Local Self-Government as at present administered in the Quaker State, we shall briefly consider its institutional development. Institutions are not the creations of a single mind nor the products of a separate age. They represent a growth, an evolutionary process. They are the great unities of history. They progress as the social order changes, and we must diligently study their varying stages of development to intelligently comprehend their present character.

In the first place, we shall portray the method of local administration which obtained when the Duke of York possessed the territory which now comprises the States of

New York, Pennsylvania, Delaware, and part of New Jersey. We venture to do so because of the interest such a sketch will afford from an historical point of view, and also because it will furnish an excellent parallel to the later system of Pennsylvania under Proprietary government. Moreover, the Duke's "Book of Lawes," with few exceptions, formed the legal basis of the proceedings of the courts upon the Delaware after the year 1676.¹ We shall speak more particularly of these courts in relation to their legislative character in a subsequent part of the present paper. They claim our attention because they possessed not only judicial functions, but exercised in addition an important control over local affairs, during the years which immediately preceded the arrival of William Penn.

The administration of the Duke of York was a close imitation of the English system. It recognized the old municipal divisions of ridings, towns, and parishes. The chief officer of the former was a High Sheriff, while the interests of the latter were presided over by a Constable, and a Board of Overseers, at first eight, but afterwards four in number. The sheriff was selected yearly by the governor from three nominees presented to him by the justices of the last sessions. The town officers were directly the choice of the people. The constable was chosen for one year; the overseers for two, one-half of them retiring annually. Under this primary colonial régime the principal unit of local government was the town or parish. Each town had its own peculiar constitution and by-laws, which, when sanctioned by the court of sessions, became the basis of its own administration. Such constitution and laws were framed by the constable and a majority of the overseers, and local observance became binding upon local inhabitants. Every town had likewise

¹ That these enactments were in force in 1676 is clear by the following. It was one of the provisions of the "Book of Lawes" that, "no jury shall exceed the number of seaven nor be under six unless in special causes upon Life and Death." This year, at Whorekill, in a suit about some tobacco, "the president of the court and six, of seven of the jury, acknowledged their proceedings to be erroneous, etc."—Hazard, *Annals of Pennsylvania*, p. 425.

its own court,¹ held at convenient intervals, where small cases were heard and decided by its officers. The constable and overseers were also, *ex-officio*, church-wardens, and in this capacity were the ecclesiastical governors and moral guardians of the parish. They not only made provision in the rates for the support of the church and minister, but it was their further duty to make known to the semi-annual court of sessions all unpunished transgressions of the moral code.²

There were two taxes, the public charge, the proceeds of which were applied to the maintenance of the general civil, military, and ecclesiastical authority; and the town rate, which went to the support of purely local government. Both were levied and collected in exactly the same manner. Upon the receipt of a "precept" from the sheriff of the riding, the constable and overseers of the various towns made out a list of taxable persons and appraised all real and personal property. These statements were returned to the sheriff, who, having examined and certified them, transmitted them to the governor. If any inhabitant thought he had been unfairly dealt with in his assessment, he could make complaint to the court of sessions, and there have his grievance redressed. The law which governed collections reads as follows: "The constable shall appoint a day and place and give reasonable warning to the inhabitants to bring in their proportions, upon which every man so warned shall duely attend to bring in his rates, etc."³ Constables were held responsible for the

¹ The "Towne Court" of the Duke's Laws is a very ancient institution. It is the court of the tithing or township transformed. It represents the survival of the Anglo-Saxon "tun-gemot." The establishment of these local self-governing communities in the English colonies of America, is simply a repetition of the course pursued by our Saxon forefathers, in their settlement of Britain.

² This kind of censorship was exercised, during the first few years of Proprietary rule, by the Grand Jury. For an example, see Watson, *Annals of Philadelphia*, vol. ii. p. 91.

The following presentment at the Chester Co. Court, in 1683, though of a quite different character, is somewhat amusing: "The Grand Jury present want of rings to the snouts of swine."

³ Duke of York's Laws, pp. 49, 50.

collection of the rates, and were empowered to recover arrearages by process of law, even after their term of office had expired. When the full amount of the levy could not be obtained, the deficiency was supplied by an extra assessment. Produce was received instead of money, in payment of the town and public taxes. None were exempt from taxation except justices of the peace and indigent persons, and even the justices were subsequently made liable for the town levy. Local taxation was designed chiefly for the support of the poor and for the maintenance of parochial churches.¹ The needy and the helpless of every parish were the especial charge of the church wardens. They were doubtless considered more in the light of an ecclesiastical than a civil responsibility. Under this régime, we see that county government in the form we now know it, did not practically exist. The riding, it is true, came in as a division between the town and the province, but it had little or no significance as a political factor. It simply represented an aggregation of towns or parishes, and possessed no organized system of municipal government. That such was the case is shown by the following law regarding lunatics. "That in regard the conditions of distracted persons may bee both very chargeable and troublesome, and so will prove too great a burthen for one towne alone to beare, each towne in the rideing where such person or persons shall happen to bee, are to contribute

¹ "Churches shall bee built within three years after this assize, to which end a Towne Rate may bee made, to begin with this yeare."—Duke of York's Laws, p. 63.

Upon the Delaware, ministers seem to have been supported by voluntary subscriptions. The petition of the Court of New Castle to the governor in 1678 was to the effect that he would "grant leave and permission to obtain and have an orthodox minister, to be maintained by the gift of the free and willing givers."—Hazard, Annals, p. 455. This request was granted.—*Ibid.* p. 458.

Ministers who were supported out of the "Towne Rate," elsewhere in the Duke's dominions, could not always have been in the established church, since, according to the report of Bishop Compton in 1680, there were at that time only *four* clergymen of the Church of England in North America.—Hazard, Annals, p. 469.

towards the charge which may arise upon such occasions."¹ Each town, therefore, helped to bear the burden, but the contributions were made distinctly and separately, and not as individual quotas to a permanent county rate. The town or parish was of much greater importance than in later times. It dealt with the leading questions of local government, and its constable and overseers formed a legislative body whose acts, as we have already seen, could only be disallowed by judicial negation.²

After the conquest of the Dutch settlements upon the Delaware by Sir Robert Carre, in 1664, it was agreed that the magistrates then in power should be continued, for a time at least, in the enjoyment of their civil jurisdiction. In 1668 we have the record of the constitution of a court, consisting of a schout and five counsellors, appointed for two years.³ English laws were not immediately imposed upon the people, but it was ordained that the Duke's enactments "be showed and frequently communicated to the said counsellors, and all others, to the end that being therewith acquainted, the practice of them also in convenient time be established."⁴ The result thus gradually aimed at was finally consummated by the precept of 1672, which declared "English laws to be established in the town and river. The office of schout to be converted into sheriff for the corporation and river, to be chosen annually."⁵ In 1676 a proclamation from Governor Andross set forth that the Duke's "Book of Lawes," with the exception of the enactments regarding constables'

¹ Duke of York's Laws, p. 64.

² "The Constable by and with the consent of five at least of the overseers for the time being, have power to ordaine such and so many peculier Constitutions as are necessary to the welfare and improvement of their Towne and if any inhabitants shall neglect or refuse to observe them, the Constable and overseers shall have power to Levie (such) fines by distress; Provided that they (the constitutions) bee not of a Criminall Nature and that every such peculier Constitution be confirmed by the Court of Sessions within four months (later by the next Court) after the making thereof."—pp. 50, 51.

³ Hazard, Annals, p. 371.

⁴ Ibid. p. 372.

⁵ Ibid. p. 397.

courts,¹ county rates, and a few other matters which pertained particularly to Long Island, should form the basis of civil administration along the Delaware. There were at this time three general courts in operation: one at New Castle, one at Upland, and one at Whorekill. These establishments were not only of a judicial nature, but were also endowed with legislative authority. They could enact "all necessary by-laws or orders (not repugnant to the laws of the governor), to be binding for the space of one whole year,"² for the administration of local matters within their respective districts. They had power to make "fitting rates for highways, poor, and other necessities."³ This levy, on account of convenience, generally took the form of a poll-tax;⁴ the constables making out the list of "tydables."⁵ It was the duty of the sheriff to make collections.⁶ No rates could be laid until the sanction of the governor had been obtained.⁷ For the better management of roads and bridges, the court appointed yearly a number of men to be overseers of highways and viewers of fences.⁸

The court also ordered the building and repair of churches⁹ and selected the church wardens.¹⁰ No mention is made of the manner in which the poor were taken care of, but it is altogether likely that they were the charge of the church

¹ It is reasonably certain, that, notwithstanding Gov. Andross' proclamation, constables' courts were in full operation upon the Delaware. One had been established at New Castle in 1672 (Hazard, Annals, p. 396-7); and we have no record showing that it ceased to exercise its powers after the above-mentioned ordinance was promulgated. On the contrary, the order issued in 1677, that the *commons* were to be regulated by the town, shows that New Castle still had some kind of separate government. In 1678, permission was given to Elseburgh, a place within the jurisdiction of the justices of New Castle, to have a constable's court. (Hazard, Annals, p. 458-9.) The record of the establishment of these courts in America furnishes one more example of the reproduction of English institutions upon colonial soil. The evidence of their survival is a point of some historical interest, as it makes against the idea of Stubbs and Hallam, who are inclined to deny that the petty constable ever possessed judicial authority.

² Hazard, Annals, p. 427.

³ Ibid. p. 441.

⁴ Ibid. p. 447.

⁵ Ibid. p. 442.

⁶ Ibid. p. 447.

⁷ Ibid. p. 428.

⁸ Ibid. p. 480.

⁹ Ibid. p. 467.

¹⁰ Ibid. p. 461.

wardens, as in New York. Though the court had the power to lay a road-tax, we find no record that such a course was pursued. It was the survival of an old feudal custom in England which compelled all the inhabitants of a particular district to work upon the highways or else to suffer certain pecuniary penalties in case they failed to fulfil the requirement. This system was in vogue in the time of Charles II.,¹ and we have evidence that it also obtained in Pennsylvania. "The imposition of a fine of 25 gilders, for neglecting to work on the roads, was among the last acts of Upland Court under the Duke's government."²

The tenth section of the charter to William Penn gave him the power to divide "the country and islands into towns, hundreds³ and counties." By a subsequent clause he also received authority to erect manors,⁴ and to introduce thereon

¹ See Statutes of the Realm, 22 Charles II., ch. 12, § 10, for fines imposed. In case the labor required by statute was not sufficient to complete all necessary repairs, a tax could be imposed to defray the expense of finishing the remaining work.—Ibid. § 11.

² Smith, History of Delaware Co., p. 124.

³ We have not been able to find any evidence to show that hundreds ever existed as local divisions in Pennsylvania, although they were common in Maryland and Delaware.

⁴ Mr. F. D. Stone, Librarian of the Pennsylvania Historical Society, has called our attention to what *may have been* a manor in full operation upon a similar basis to those in England. It is cited in Dr. George Smith's History of Delaware County. It bore the name of the Welsh Barony, and consisted of a tract of land comprising about 40,000 acres. The settlers were Welsh Quakers, and amongst other immunities granted to them by their charter, was the privilege to have "our bounds and limits by ourselves, within the which all causes, Quarrels, crimes, and titles [shall be] tried and wholly determined by officers, magistrates [and] jurors of our own language, which are our equals."

Tradition has it that a certain stone building situated upon the manor of Moreland, was used in early times as a prison-house for the refractory tenants and servants of the first Chief Justice. The whole subject is an exceedingly interesting one, and will claim the attention of the writer in a future paper. The subject of the Manorial System of Maryland is under investigation by Mr. John Johnson, a graduate of the Johns Hopkins University. Mrs. Martha J. Lamb has undertaken the "Historic Manors of New York."

the English system of manorial government. We have seen that the tendency of the Duke of York's laws was to centre local government in the towns. Under the Proprietary administration a totally different order of things was instituted. The county now became the element of primal importance. In fact it may be safely asserted, that, during nearly the entire portion of the first half-century of the government of Penn and his descendants, the town had little or no significance as a political division. The county court of general sessions was the real centre of authority, and all local affairs were administered by officers which it commissioned.¹ Though the town was afterwards admitted to a share of municipal government, it has never quite regained the position it held previous to 1682. We shall further notice, in passing, how some matters were gradually handed over, conditionally, to township control.

By an act passed in 1682, which was subsequently declared a fundamental law, it was enjoined that no separate tax at any time should continue longer than one year. The objects for which county taxes were raised, were "for the support of the Poor, building of prisons, or repairing them, paying the salary of members belonging to the assembly, paying for Wolf's Heads, expence of Judges, with many other necessary charges."² It was the duty of the justices of the court of sessions, with the assistance of the grand jury, to estimate the general county expenses, and to make an assessment, upon the basis of the provincial tax, to defray them. The enactment of 1696 inaugurated a much more convenient system. It provided that six assessors should be annually chosen for each county, to act in conjunction with the justices and grand jury, in determining public charges. This body could levy a rate of one penny in the pound, and six shillings *per caput* upon all freemen between 16 and 60 years of age. The

¹ "The court about this time (1685) appointed the justices, constables, road overseers, etc."—Watson, *Annals of Philadelphia*, vol. i. p. 304. Seven years later, in one county at least, the road overseers were elected by the people.—See Records of Chester Co. Court for 1692.

² *Laws of the Province of Penna., 1682-1700*, p. 233.

assessors heard and decided all appeals. The Proprietary and his deputies were alone exempt from taxation. It was the duty of the various constables to bring the assessors a list of the taxable inhabitants of their districts, together with an accurate valuation of property liable to taxation. The assessment board determined the required number of collectors and appointed them. The county treasurer was also an appointee of this body. It seems that the above method for raising county rates did not prove satisfactory, since numerous supplemental acts were passed to make provision for the collection of arrearages.

In 1724 a new system was introduced, which, though not unlike the former in its essential features, yet prescribed a mode of procedure somewhat different from that recognized by previous law. It provided for the election of three commissioners to perform the functions which had hitherto belonged to the court of sessions, with a few additional duties. The commissioners issued the "precepts" to the constables, constituted a tribunal for trying appeals, inaugurated proceedings against delinquent collectors, and imposed pecuniary penalties upon the county treasurer, and the assessors for neglect of duty. To facilitate the collection of rates, each county was divided into a definite number of districts. The limit to the assessment provided for by this enactment, was fixed at three pence in the pound, and a nine shillings poll-tax.

The Revolution did not change the form of local government, which had obtained immediately before the year 1776. There was no distinct difference between the administration of the province and of the commonwealth. But in relation to the topic at present under consideration, an advance was made towards the present system in 1779. In that year the assessment board, consisting of the three commissioners and six county assessors, appointed¹ two assistant assessors for each township, to discharge the duties which had hitherto devolved upon the constables, in making the returns of taxable inhabit-

¹ These officers were afterwards elected by the people.

ants and property. By this act stringent measures were also adopted for collecting unpaid rates. If settlement was not made within thirty days, the delinquent's goods could be sold; and if, after three months' time, his obligations had not been met, his real estate could be seized and disposed of by the commissioners to satisfy the claim. The office of clerk of the commissioners, or county clerk, which still exists, was first inaugurated at this time. Supplemental legislation this same year enacted, that the *owners* and not the *occupiers* of real estate should be taxed. Afterwards a proviso was introduced which caused all local rates to be assessed upon the basis of the last State tax. The principle of the division of labor was carried out in making the assessment, each county assessor, with the two assistants, instead of the whole board, performing this duty for every separate district. Collectors were now appointed by the commissioners alone. A return of all county levies was required to be made annually to the general assembly.

In early colonial times the management of roads and bridges was vested in the county. All public highways were laid out by order of the governor and council,¹ while private roads, connecting with them, and cart-ways leading to landing-places, were opened-up at the instance of the court of quarter sessions,² if the viewers had previously made a favorable report upon the projected enterprise. Roads and bridges were made at the expense of the county; but it was not unusual for a lottery³ to be established to liquidate the cost of the undertakings. The court named the overseers,

¹ Colonial Records, vol. i. p. 163.

² The court gave the order to proceed with the work, after the grand jury had presented the need of a new road. Smith (Hist. Del. Co., p. 163) quotes from the Chester County Court records the following: "The road from Darby to Haverford to be laid out by the grand jury and other neighbors." In 1699, six viewers were appointed to do work of this kind; or rather to make a report upon proposals regarding new roads.

³ Lotteries were often made use of to raise funds to open roads, construct bridges, and build churches. For legislation authorizing these establishments, see Laws of Pennsylvania.

and these officers were responsible for the good repair of all highways within their territorial limit. Every freeholder was compelled when summoned to work upon the roads, under penalty of a fine if he refused to obey. Later enactments transferred highways from county to township supervision, directing that the latter should assume all financial burdens entailed in their management. The overseers or supervisors were thenceforth township officers, and two were elected annually for each municipality. They were empowered to levy a road tax, within certain limits, after having obtained the requisite permission from two justices of the peace. They could also hire laborers to repair highways and bridges if they thought fit, instead of summoning the inhabitants to do the work as heretofore.

The Poor question has occupied the attention of the lawmakers of Pennsylvania to a considerable extent; and much legislation is to be found upon the subject among the acts of the general assembly. In early times numerous experiments were tried, but the law of 1771 seems to have been the one, which, on the whole, yielded the most satisfactory results. It does not differ very materially from the present poor law of the State. At an earlier period charity had been dispensed at the instance and discretion of the county court; the funds being supplied out of the regular county rate. The poor tax had preference over all others, and was first paid in the disbursement of the moneys. A curious expedient was resorted to to prevent undeserving persons from receiving public support. Every recipient of relief was obliged to wear a badge "with a large Roman (P) together with the first Letter of the name of the county, city, or place, whereof such poor person is an inhabitant, cut either in red or blue cloth."¹

¹ It was customary in England, in addition to the ordinary punishment, to mark criminals with the initial letter of the crime for which they had been convicted. This proceeding was also followed in Pennsylvania. A part of the sentence against Long Finne, for his rebellious acts, was that he should be "branded on the face with the letter R." Hazard, *Annals*, p. 378. See also Records of Chester Court, January 1, 1693, for the punishment accorded to a woman who had been found guilty of fornication.

The act of 1771 provided for the appointment of two overseers in each township, by the justices of the peace, at a yearly meeting specially convened for the purpose. These officers could, with the authority of two justices, levy a three-penny rate on property, and a six shillings poll-tax as often as was thought advisable. The amount thus raised was employed to provide subsistence, shelter, and employment for all those whom misfortune had made a burden to society. The tax was recoverable by ordinary process of law, and was levied on the same basis as the county dues. The overseers were responsible for the collection of the amount assessed, and if they refused to pay over moneys in their possession, they were deemed guilty of a misdemeanor and punished with imprisonment. They were required to keep an account of all receipts and expenditures, and their books were audited by three freeholders annually chosen by the people. A list of the poor was kept on record, and an order from a justice of the peace was necessary for the inscription of new names therein. Strongly protective measures were adopted against the growth of pauperism, as for example, the requirements for gaining a legal settlement in a township, and the restrictions attached to the removal of the poor from one district to another. New-comers had to bring with them certificates, and householders must give notice of the arrivals of guests coming from any place outside of the province, except Europe. Any one, to become legally settled, must have been an officeholder for one year, or must have resided in the same locality at least two years, and contributed to the poor fund. Widows were deemed settled in the same place as their former husbands, and indentured servants must have performed one year of service in some particular locality to fulfil the required conditions of residence. All having near relatives who were paupers, were compelled by the province to support them, if in a position to do so. Notwithstanding all this defensive legislation, and despite the influence of these well-timed measures, it would appear that the demands upon public charity were augmented instead of diminished. Complaints were made from time to time that the means for supporting

the poor were entirely inadequate, and in 1779, an act was passed limiting the rate at seven shillings and six pence in the pound, and at not more than six pounds, and not less than three pounds per poll.¹

The Present System.

Local self-government in Pennsylvania at the present time affords a peculiarly interesting study, representing as it does a condition of affairs in which neither the town polity of New England nor the county administration of the South, forms the decidedly predominating element. It occupies the middle-ground between these two opposing phases of local life. In the Southern States the county is the more important factor, and its subdivisions are such only in name, exercising but little control over their own affairs. In New England, on the contrary, the highest political vitality is to be found in the town. The system of Pennsylvania aims at a partition of powers. The officers of the township assume the management of local roads and highways, and in some counties provide also for the support of the pauper population. But while they have the power to impose a tax for these purposes, rates can only be levied upon the basis of the last adjusted county assessment, and the law prescribes certain limits beyond which they cannot go. Furthermore, no pro-

¹ An explanation of this seemingly high rate is to be found in the fact, that the continental currency had that year reached a very low state of depreciation. There has been preserved in the Library of the Pennsylvania Historical Society, a copy of a publication called the United States Magazine, bearing the date of 1779, for which the subscription rates were \$3.00 per copy or \$24.00 a year! It is possible that the apparently high price charged for this periodical may have been due, in some degree, to its widespread popularity, and to the extraordinary demand indicated by the following lines, taken from the dedicatory ode:—

“Statesmen of assembly great;
Soldiers that on danger wait;
Farmers that subdue the plain;
Merchants that attempt the main;
Tradesmen who their labors ply;
These shall court thy company;
These shall say, with placid mien,
Have you read the magazine?”

vision is made for any such democratic institution as a town-meeting, where the people may come together to vote appropriations, and to frame by-laws for their own government. Neither is the township represented by a supervisor upon the county board, as in New York, Michigan, Illinois, and other of the Northern and North-Western States. The county is the leading local unit, and, under the commonwealth, may be said to wield the largest share of political power. It regulates affairs directly, and its officers are responsible to the people for the exercise of administrative control. The chief authority is vested in three commissioners, who are elected for a term of three years. In addition to duties which will be subsequently mentioned, this board is required to transact the county business, to keep a record of its proceedings, to publish annually a correct account of all receipts and expenditures of the previous year, to make an annual statement to the secretary of the commonwealth of all sums paid for the support and maintenance of justice, and to have charge of the erection and control of the county public buildings. Each county has also a treasurer, a surveyor, and three auditors. It is not necessary to define the duties of these functionaries. We do not include in this enumeration those offices which pertain to the administration of justice, as it is our intention to confine this discussion to purely municipal matters.

A board of supervisors, generally two or three in number constitutes the highest township authority. But this numerical limit is not absolute, since the law provides for an increase at the pleasure of the electors. The term of office of this governing board extends over a period of three years. There are also an assessor, two assistant assessors (in triennial years), a town-clerk, a treasurer, three auditors, and two overseers of the poor, where the poor are a township charge. Under a constitutional provision, the election of township officers takes place annually on the third Tuesday of February.

The county rates and levies are made in the following manner. Every third year the board of commissioners issues

a notice to the assessors of the different townships, requiring them to return, within a certain specified time, a correct list of the names of all taxable persons residing within their territorial jurisdiction. The assessors and their assistants immediately proceed to make out the required statement, and to furnish also an accurate valuation of such real and personal property as the law directs. Upon this basis, the commissioners levy a certain rate *per centum*, which rate is uniform throughout the different townships. The commissioners cause transcripts of the assessments to be prepared and furnished to each assessor, together with the rate *per centum* of the amount levied. They also fix a day on which appeals shall be heard. The assessor is then required to give notice, either written or printed, to every taxable inhabitant in the township, of the amount for which he stands rated, and to inform him also of the day set for hearing appeals. All objections raised to the assessment are decided by the commissioners; but if any inhabitant takes exception to their ruling, he may present his case for final judgment before the court of common pleas. The taxes thus levied are collected by a collector for each township, appointed by the board of commissioners. The selection is usually made in accordance with the recommendation of the various assessors, though the range of choice is not necessarily limited to such nominees.

The State taxes are furnished through the medium of the several counties, and the commissioners perform the same duties in relation to their levy and collection, and the same proceedings are had regarding appeals, as in the case of county rates.

The township has the power to lay certain rates independently of county authority or jurisdiction. For instance, the supervisors are authorized to assess the taxables of their township for a sum not exceeding one cent on the dollar upon the valuation of their property, to keep the roads, highways, and bridges in good order. It is also the duty of the overseers of the poor, where the poor are in the charge of the township, to make a similar provision for the support of the indigent and helpless, having first obtained the consent of

two justices of the peace. These rates can only be laid in accordance with the last adjusted county valuation. The township assessor aids in fixing the assessment, and collection is made by persons designated by the supervisors and overseers, in a meeting convened for the purpose.

Roads and highways lying within the boundaries of a township are under its management. They are controlled by the supervisors, and the expense of their good keeping is borne out of the fund raised by the above-mentioned assessment. It is allowable for any person to work out his road-tax instead of paying it in money. This is usually done. With this fact in view, and with the poor more generally in the care of the county, it will be seen that the tendency is to reduce purely township rates to a minimum. The supervisors are also responsible for the repair and renewal of all causeways and small bridges situated on township highways. If a road forms the dividing line between two townships, the expense of its good keeping is shared equally by the two districts. When a number of inhabitants think it is advisable that a new highway should be opened up, they send a petition to that effect to the court of quarter sessions. This judicial body at once appoints viewers, who proceed to inspect the locality through which it is proposed the road shall run. They make their report to the court, and if a favorable view is entertained, the road is confirmed and viewed to be opened. Damages, to be paid by the county, may be awarded for any injury to property, even though the owners were petitioners in behalf of the project. Bridges over large rivers or streams, which would entail more expense in construction than it is reasonable should be borne by one or two townships, are built at the cost of the county. Proceedings are instituted at the order of the court of quarter sessions, who act upon the representation of the township supervisors, or a petition of interested inhabitants.

The poor are legally a township charge; though their care is generally placed in the hands of the county commissioners. In the latter event, the commissioners, with the approval of the court of quarter sessions, select suitable real estate, and erect thereon a building called a "House for the

Destitute." This establishment is used for the accommodation of all poor persons who have gained the required legal settlement. Three citizens, one of whom is chosen every year, constitute a board of directors. This body manages the internal economy of the institution. It also has authority to bind out children as apprentices and to provide employment for the able-bodied poor. The directors furnish a yearly financial estimate to the commissioners, so that due provision may be made for a poor-fund in levying the county rate. The board is further empowered to make any suggestions which they may deem expedient, for improvements or alterations in the institution. It may grant relief, to a limited extent, to needy persons who are not inhabitants of the almshouse. The judges of the various courts of the county, and ministers of the gospel of all denominations are, *ex officio*, visitors of the institution. In this capacity they are entitled to examine into its general condition, and to scrutinize the books of the board of directors. As soon as the poor become the charge of the county, the office of overseer in the different townships is abolished.

When the poor are under the control of the township, their care is entrusted to two overseers, and their maintenance provided for by means of a small tax. The overseers are obliged to furnish relief to all applicants for assistance, who have gained a legal settlement in the township. Aid must also be given to those who have not a legal settlement, until they can be removed to their former place of residence. The duties of the overseers in relation to binding out children as apprentices, and finding suitable work for those capable of active employment, are similar to those devolving upon the county directors. No one is entitled to be placed upon the poor-book without an order from two justices of the peace. Every house-keeper receiving a transient poor person is required to give notice to the overseers within ten days after such reception, or, in case of default, to become responsible for all further maintenance.

A few isolated and comparatively unimportant exceptions may occur to the method of local administration as set forth in the preceding pages. These need not demand our present

consideration. A general likeness pervades the municipal organization of the State, and the foregoing sketch represents, as accurately as possible, that system which prevails throughout the commonwealth of Pennsylvania.

Passing in rapid review the facts which have just claimed our attention, we cannot help noticing the liberal methods which, from the very first, existed in the administration of local affairs. The control over matters pertaining to self-government was not given to individual isolated communities, as in New England; nor was it concentrated in the larger unit, the county, as in Virginia and Maryland. And yet the system of Pennsylvania was quite as democratic as the one, and as healthfully centralized as the other. The power to make by-laws for municipal management, as well as the authority to legislate for the entire province, was, from the beginning, in the hands of the people or their delegates. All public officers were either elected directly, or chosen by those who were. Penn himself could not appoint even a justice of the peace. The words of the historian Bancroft are strictly true: "But for the hereditary office of *Proprietary*, *Pennsylvania* had been a representative democracy."

The present system of local self-government does not belong entirely, nor even largely, to the period of the commonwealth. It has, of course, been improved and modified by enactments since 1776, but, as a whole, it is simply the continuation of provincial beginnings. The central idea upon which it is based has been the same throughout. That idea is the inalienable right of the people to a control over their own affairs, and may, doubtless, to some extent, be considered as the practical realization of the words of Penn: "If the people want anything which will make them happy, I shall readily grant it." The great principle of popular sovereignty was virtually recognized by the illustrious founder of this State in every department of its provincial administration; and upon this foundation principle the political superstructure of Pennsylvania has slowly and surely risen, until now it may well be called the keystone of the arch of American Liberty.

VI

PARISH INSTITUTIONS

OF

MARYLAND

"The Parish, as we see it in Western Christendom, owes its origin to several causes, and is the final result of several earlier forms. The *paroikia* of early days was neither a parish nor a diocese, but the community of Christians living within a city or a district, regarded in relation to the non-Christian population which surrounded it. Every such community seems to have had a complete organization, and there is no trace of the dependence of any one community upon any other."—*Hatch, Organization of the Early Christian Churches (Bampton Lectures, 1880.)*

"The limits of parishes were probably, in almost all cases, fixed by the previously existing organization. Where the Roman organization prevailed, the Parish was the *pagus*, *vicus*, or *castellum*, with its surrounding *territorium*. Where, as in England, the Roman organization had been almost completely swept away, the Parish was identical with the township or the manor. . . . Between Parishes, as between townships, were frequently tracts of more or less unsettled or common land, on which chapels might be erected without trenching on any parochial right."—*Hatch, "Parish" in Smith's Dictionary of Christian Antiquities.*

"As the kingdom and shire were the natural sphere of the bishop, so was the township of the single priest; and the parish was but the township or cluster of townships to which that priest ministered. . . . The parish and the township, have existed for more than a thousand years side by side, identical in area and administered by the same persons, and yet separate in character and machinery. . . . The parish, then, is the ancient *vicus* or *tun-scipe* regarded ecclesiastically."—*Stubbs, Constitutional History of England.*

"The earliest records which we have of the proceedings of Parliament, find *Parishes* treated as the known and established integral subdivisions of the *hundred*. . . . It is decisive of the point as to the identity of the *Parish*, as an Institution, with the *Tything* of freemen and their tythingman, that the existence of a separate constable is an unquestionable criterion of the separate recognition of a Parish."—*Toulmin Smith, The Parish.*

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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.— *Freeman*

VI

PARISH INSTITUTIONS
OF
MARYLAND

With Illustrations from Parish Records

By EDWARD INGLE, A. B.

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PARISH INSTITUTIONS OF MARYLAND.*

Before the last years of the seventeenth century but few Church of England ministers had been attracted to the colony planted by Lord Baltimore on the shores of the Chesapeake. Those who had ventured to take up an abode there were supported mainly by voluntary contributions, with now and then a legacy, or by the produce of their farms. Frequent complaints were made to England of the low state of morality and religion in the Province. Movements were started with a view of checking these evils, and the result was the passing in 1692 of an "Act for the Service of Almighty God and the Establishment of the Protestant Religion" in Maryland.† Agreeably to such provisions the justices and freeholders of

*In the library left by the late Bishop Whittingham to the Diocese of Maryland, there is a rare collection of materials illustrating the social, civil and religious history of the Province and State of Maryland. Copies of manuscripts found in English libraries, original parish records, parish histories, a remarkable collection of Maryland laws and documents, the diaries, letters and sermons of early Maryland clergy—these, if properly handled, could be made fresh and interesting sources of knowledge upon many points of our history. From such materials in part has been drawn the following paper upon the Parish Institutions of Maryland. Bacon's "Laws" have been the basis; but inasmuch as one must not believe that measures succeeded, simply because enactments favoring them are to be found in the statute books, every point made in this sketch has been verified, it is believed, by concrete examples.

† Bacon, 1692, Chap. II.

each of the ten counties divided their respective counties into parishes, varying in size according to their number of taxables.* A fine of one hundred pounds of tobacco was imposed upon Sabbath-breakers, and was to be used for the benefit of the poor of the "Parish, City or borough" where the offence should be committed.

In the newly settled country, a meeting of all the inhabitants of a parish in Vestry was well nigh impossible. This probably was a reason for the adoption of the representative system of Select Vestries, a usage that had already sprung up

* All males and all female slaves of the age of sixteen years and over were taxables, except the clergy of the Church of England, who had benefices in the Province, paupers, and disabled slaves. Bacon, 1715, Chap. XV, 5.

Within four years the counties had been divided into thirty-one parishes, (*Historical Collections of the American Colonial Church. Maryland*, p. 18). At first the parishes were contained within the limits of the county; but later, as the number of counties and parishes increased, some parishes lay in parts of two and even three counties. The hundreds were not of necessity integral parts of the parish, although they were made the basis of the new division. It is probable that the hundreds had been laid out according to natural boundaries, *i. e.*, the rivers and their tributaries, and the parishes were subject to the same idea, as may be seen from such of their names as Herring Creek, Middle Neck, South River, &c. In the Records of Baltimore County Court, 1692, fol. 338, is the following: "We do think fit to order that one parish be in Spesutia hundred and another in Gunpowder river hundred." In the same, 1693, fol. 126: "We, the vestrymen for Patapsco hundred, met together at the house of Maj. John Thomas." The word "hundred" was used here not for "parish" but simply to designate the parish until a proper title had been given. Thus in the June Court, 1693, fol. 115, it is shown that "the vestrymen of this parish of Gunpowder hundred" had agreed to build a church on Elk Neck, Gunpowder river, and to call the parish Copley (later St. John's). As population became denser, the number of hundreds in the county, without regard to parish bounds, became greater, so that frequently one hundred was in two parishes. So much confusion resulted from this, that finally the County Courts were empowered to lay out anew the hundreds in such a manner that no hundred should lie in more than one parish. When a new parish was to be erected in an old one, the consent of the incumbent was obtained, and then a petition was sent to the Assembly for an Act enabling the new parish to be made.

from other causes in England.* By Vestry was usually meant the house or room where parish meetings were held; but the term was frequently used to denote not only the place of meeting, but also the assembly itself, and the members taken collectively. The freeholders chose the Vestry, which was a corporate body for the holding and disposal of church property and the acceptance of bequests.† The Act of 1692 with some later ones had the effect of organizing Vestries, of building more churches, and of bringing a number of clergy into the colony, but there was still felt a need of further legislation in regard to ecclesiastical matters. Accordingly, in 1702, another Act became the law, by which the Church of England was more firmly established in the Province.‡

As an institution of Englishmen the parish system of Maryland was based upon the parish laws and customs of the mother-land, but there were various modifications to suit the new conditions. The materials for a reconstruction of this system are meagre, but the laws on the subject tell what had to be done, and various parish records show what really was done.

The Governor, for the Proprietor, inducted a Minister into a parish. He usually made appointments from nominees of the Bishop of London, and a Vestry was obliged to accept whomsoever the Governor sent. Occasionally he consulted the wishes of parishioners. In the record book of Prince George's parish is a copy of a letter from Gov. Sharpe to Mr. Alex.

* For a condensed statement of the duties and capacities of English Vestries, consult "A Compilation containing the Constitution and Canons of the P. E. Church in the Diocese of Maryland, &c.," pp. 51-57. The subject is treated at length by Toulmin Smith in "The Parish," and by J. F. Archbold in "Shaw's Parish Law."

† The name Vestry is derived through the French from the Latin *vestiarium*, from *vestis*, a garment.

‡ Bacon, 1701-2, Chap. I. In 1700 an Act had been passed and sent to the King in Council. It was not approved in all its parts, but, having been omitted from the general repeal, was sent back with amendments to Maryland. This former Act amended was the Act of 1701-2.

Williamson, whom he had licensed "to act as curate" until another rector might be appointed, "which step," the letter states, "I conceive would be more agreeable to the Parishioners than if I were immediately to induct that gentlemen." The people thought they ought to have the privilege of choosing their own rector, as they were the ones who contributed towards building churches, and paid the salaries of incumbents. In 1768 one of the parishes refused to receive ministers presented by Lord Baltimore through his Governor, and upon an appeal to English Courts, a decision was given in favor of the parish.* But as a rule Vestries accepted the Governor's appointee, and, when they had done this, they could not rid themselves of him unless he chose to resign. There are, however, accounts of unpopular ministers having been mobbed and locked out of church. In one parish after the death of the incumbent, the long dissatisfied parishioners requested the Governor not to induct another rector so disagreeable to them.

For the support of the clergy, forty pounds of tobacco were levied each year upon every taxable. The Constable of the hundred made a list of the names of all taxables and gave it to the Sheriff. He, after collecting the tobacco and deducting five per cent. as a fee, paid the remainder to the incumbents of the parishes in the county. As there was not an over abundance of prayer-books in use among congregations, every minister had to keep a clerk who acted for the congregation. One can almost see him in his desk below the pulpit, and

* Coventry Parish, Somerset County. This parish had been contending for its rights for a long time. In 1749 the Vestry had indicted a newly presented rector for breaking into the parish church, the doors of which had been closed against him. The minister was acquitted only by the vote of the chief justice. One of the ministers appointed to the parish declared that he had been threatened with a ducking in a mill pond, and that armed resistance had been made against him. A full history of the troubles is given in Dr. E. Allen's manuscript "History of Coventry Parish."

hear him making the responses in sonorous tones, or lining out the hymns. It is, perhaps, a warm June morning, and while the elders are peacefully dozing, the youths cast longing glances through doors or windows towards their sleek steeds* fastened in a shady spot convenient to the "upping block," or they watch with interest the efforts of a Church Warden to drive some stray dog from the church. Those who are not overcome by the general drowsiness, join in the singing, or patiently hearken to the delivery of the usually prosy sermon, or to the reading of the penal laws of the Province.

Service over, the congregation breaks up into groups, some reading the notices posted at the church door, others discussing the latest bits of news, the prospects of a fine tobacco-crop, and others exchanging friendly greetings. At last the few stragglers disappear and the rector wends his way to the "glebe." In many parishes there were glebe-lands, which the incumbent either occupied or rented. Glebes were generally donated to the parish, but when there was no minister, and the church property needed no repairs, the parish funds could be expended in buying and stocking a glebe. The incumbent did not always insist upon everybody's paying the tax for his support. In 1742, the rector of the parish where Charles-town had been recently laid out, declared that all persons taking up their abode in the new town should be free from such a tax.† He must have been either a man of means, or settled in a wealthy parish. Many of the clergy were poorly compensated for the labor and trouble they were compelled to undergo.‡ The parishes were very large, and the

* "They are all great horsemen and have so much value for the saddle, that rather than walk to church five miles, they will go eight to catch their horses and ride there, so that you would think the churches looked like the outside skirts of a country horsefair."—"Itinerant Observations in America," Lond. Mag. 1745-6. Reprinted in Coll. Georgia Hist. Soc.

† Bacon, 1742, Chap. XXIII, 18.

‡ Extracts from a letter written in 1711 by Alex. Adams to the Bishop of London, (Hist. Coll. Amer. Col. Ch. Md., p. 63): "For these four

parishioners lived scattered in every direction. The minister was, therefore, obliged to travel about on horseback in order faithfully to discharge his duties to his congregation. The clergy, however, enjoyed certain immunities and small emoluments. They were not taxed and were exempt from militia service. It was quite usual for them to receive a fee for delivering a sermon at the funeral of a wealthy parishioner. If a minister was in the parish, a lay magistrate, who dared perform the marriage ceremony was liable to a heavy fine of tobacco. Banns were published in the parish to which the prospective bride belonged, and her rector received the fee. If there was no incumbent, the Governor granted a license and then any minister could officiate at the wedding.

An Act was passed in 1704* to secure the parishes in the possession of their libraries, which the Rev. Dr. Bray had

years I alone have served, as a Presbyter of the Church of England, the whole County of Somerset, consisting of four parishes, so that six Congregations are supplied by me, which obliges me to travel 200 miles per month, besides my pastoral charge in my own parish (Stepney), which has a church and chapel, and is near 30 miles in length, and some 16 or 18 miles in breadth, which possibly is a labour that few in America undergo: yet, my Lord, I can't subsist without some assistance, for Tobacco, our money, is worth nothing, and not a Shirt to be had for Tobacco this year in all our County: and poor ten shillings is all the money I have received by my Ministry and perquisites since October last."

"I humbly desire your Lordship to send me a Letter to be chaplain to some man-of-war that comes to convey the Virginia Fleet next year, and after I have got some money by being chaplain aboard to pay my Debts (which are not very considerable as yet), I assure your Lordship I am resolved to return to my Parish as soon as times amend, and I can comfortably subsist among them."

"Our Cloathing, household furniture, Malt, beer, sugar, spice, Coffee, Tea, and such Things generally come from England, and are sold by y^e merch^s here at above one hundred ³/₄ cent. The expense of living here is generally valued doubl. w^t it is in England." (Ibid. p. 138). Many of the clergy were for a long time without surplices, and some were compelled to teach in order to gain a livelihood.

* Bacon, 1704, Chap. LVI. Papers of the Rev. Dr. Bray, Lond. 1699, p. 32. For a life of Dr. Bray, see Hawks, "P. E. Church, U. S.," Vol. II, pp. 83-114, and Todd's "Life and Designs of Dr. Bray," London, 1808.

suggested, and at considerable expense, had procured for "the Incouragement and Promoting of Religion and Learning in the Foreign Plantations, and to Induce such of the Clergy of this Kingdom as are Persons of Sobriety and Abilities to accept of a Mission into those Parts." Two-thirds of the books sent to America were bestowed upon the parishes in Maryland. The parish library belonged to the incumbent, who was held accountable for the books to the Governor and Council, and to the Vestry, and had to pay triple cost for any damages. When he removed, he had to deliver to the Vestry the library in as good a condition as possible. As the books were "for the sole Use of the Minister," they were mostly theological and classical works. But at least one collection, it seems, provided against temporal as well as spiritual foes. In it were contained, besides "Catechetical Lectures," "The Lawfulness of Common Prayer," and "The Whole Duty of Man," a book on "Martial Discipline," one on Articles of War, a perspective glass, a pocket compass, and a dark lantern.

The Vestries were required to inspect twice a year the parish libraries, but they must have neglected their duty in this respect, for few if any of the books are known to exist.*

Dr. Bray wrote in 1700 that the Governor of Maryland had caused an Act to be passed whereby free schools were to be established for the propagation of the Gospel, and the

*The following extract from "Notes and Queries," Oct. 7, 1882, may in some degree explain their disappearance: "I can well remember in 1852 paying my first visit to Beverly and inspecting the noble perpendicular of St. Mary in that town. . . . In one of the vestries in the north transept was a small library, consisting mainly of goodly folios, chiefly theological, covered with dust, in a most dilapidated condition, and I was then informed, the fires in the church had usually been lighted from this literary source for some time. Thirteen years afterward . . . a second visit was paid to the same church, then undergoing restoration. The pews had gone and also the small collection in the library had become 'fine by degrees, and beautifully less,' for it was apparently reduced to one book, a copy of the *Hexapla*. John Pickford, M. A."

education of the youth in the Province. These schools were to be for the "instruction of youth in Arithmetic, Navigation and all useful learning, but chiefly for the fitting such as are disposed to study divinity, to be further educated at his Majesty's College Royal in Virginia."* In an Act of 1723,† it is stated that youths were to be educated, so that they might the better serve Church and State. It is probable that for the purpose of looking after the interests of the Church, one minister was a member of the board of seven school visitors in his county. The minister may have occupied this position by reason of his attainments, for there were talented men among the Maryland clergy. One found enjoyment in compiling the laws of the Province, and superintending a manual labor school, another was clerk of the upper House of the Assembly, while not a few kept private schools. Such conscientious laborers were, however, comparatively rare. It was no unusual thing for ministers, who had been disgraced at home,‡ to be sent to America to reform. Reformation did not always take place. Many, removed from the restraints of ecclesiastical superiors, became careless in the performance of their duties, and some, indeed, acquired a bad reputation for scandalous living. Drunkenness was their chief failing, but more heinous crimes were committed by them. One, who had enjoyed his parish during thirty years, had become disabled by age. Refusing the assistance of neighboring clergymen, he authorized his clerk, a convicted felon, to read the

* Md. MSS. in the Whittingham Library, p. 82.

† Bacon, 1723, Chap. XIX.

‡ In the Hist. Coll. Amer. Col. Ch. Md., pp. 128-129, is a list of the clergy in Maryland in 1722. This was evidently prepared by a Whig. The following are some of the descriptions: "A stickler for the present happy establishment," "A Whig & an excellent scholar & good liver," "An Idiot & Tory," "A Grand Tory & a Rake," "A Whig & a good Christian," "A Whig of the first rank, and reputed a good liver, but a horrid preacher," "Tried for his life in Virginia for shooting a man. Reformed." The story of the notorious Bennett Allen is not worth repeating.

whole service, and generally neglected his other parochial work. The Vestry much aggrieved complained of his conduct, and also accused him of drinking, quarreling, and fighting.* To check evils of this kind "Commissaries" were appointed, one for each "shore." These held visitations from time to time, and investigated complaints from parishes. As they were somewhat ignorant of their powers, they were hindered in their work, and accomplished little good either in correcting abuses, or in reconciling the people in general to the existing Establishment.† The Assembly passed several acts unfavorable to the clergy, and in 1771‡ an especially stringent one, by which every minister appointed to a parish was compelled to swear that he had no "simoniacal contract for his benefice." If he were absent from his parish one month at a time, or two months during the year, he was subject to a fine of ten shillings; if a Vestry or the Church Wardens should complain of a minister, the Grand Jury was to investigate the charges, and if these were sustained the offender was to be tried by a court consisting of three clergymen, three laymen, and the Governor, or, if he was not a member of the Church of England, by the first person on the list of the Council, who was a Churchman. This last provision was most obnoxious to the clergy, who thought that a court composed in part of laymen smacked of Presbyterianism, and should, therefore, be abolished.

But the greatest historical interest centres in the Vestry of which the Minister was "Principal." In every parish six *select* Vestrymen were chosen by the freeholders. Every Vestryman subscribed the test, took the special oath of his office, and the general oaths of allegiance, abjuration and asso-

* Hist. Coll. Amer. Col. Ch. Md., pp. 130-131.

† The Commissaries were opposed on all sides. In one instance a minister who was preparing to sue the Commissary for damages, was only prevented from so doing by falling in a drunken fit into the fire and burning to death. See Sprague's Annals, pp. 36-37, Hawks, Vol. II, pp. 118-230, Hist. Coll. Amer. Col. Ch. Md., pp. 130-131, and elsewhere.

‡ Hanson, 1771, Chap. XXXI.

ciation,* which were administered at the first election by a Justice of the Peace, afterward by the "Principal." The legal time for elections was every Easter Monday, when the two Vestrymen who had served longest, were dismissed, and others appointed in their place. No one could serve as Vestryman more than one year in three. This law was strangely misconstrued by some, for, in one parish, some members of the Vestry were elected for a period of three years, and actually obeyed the decree of the parishioners, and that too in a town where the law should have been best understood, for County Court was held there. The only qualifications necessary for a Vestryman were, that he should be "sober and discreet" and not a member of the Romish Church. Keepers of ordinaries were excused from acting, and a certain Mr. Caswell was prevented from continuing in a Vestry by reason of his being coroner. Some Vestrymen were not even open professors of religion. They were generally men well known and of good report in the parish. For instance, the inhabitants of Piscataway Parish elected as *foreman* of the Vestry, Mr. John Addison, who was at the time a member of the Governor's Council and Chief Justice of Charles County. In the same Vestry were other prominent men. These were not chosen, it should be remembered, with a view of connecting their civil functions with those of Vestrymen, but because it was believed they would not abuse the confidence reposed in them. Occasionally accidents prevented the holding of elections at the proper time, in which case the old Vestry continued in office, and its acts were approved by the Assembly.†

Two Church Wardens were elected annually in the same manner as the Vestry, but were always reëligible.‡ Their

* The oath of association was taken during William's reign; the oaths of allegiance and abjuration were used after the accession of George I.

† Bacon, 1760, Chap. VI.

‡ "William Bruce, Churchwarden Elect for Christ Church Parish in Calvert County, appeared, & alleged he was exempted from the Office of Churchwarden, being a Practitioner of Physick, and was excused." (Hist. Coll. Amer. Col. Ch. Md., p. 95).

special duties were to take care of the church linen, "pewter or plate," and to provide bread and wine for the communion. Expenses incurred in procuring the elements were defrayed by parish funds. Sometimes the rector took charge of these matters. An entry in one parish record book states that the Rev. Edw. Butler had given up the "communion furniture." In another we read that the Rev. Alex. Williamson was paid "five pounds five shillings for finding wine for the parish use for over a year." In 1765 the Vestry of St. James' Parish ordered that "persons intruding into other persons' pews should be taken out by force and put in the stocks."* The Church Wardens probably executed this order, for they had to preserve "order in and around the church." When the "Commissary" held a visitation, the Wardens met him, and gave an account of the state of their parishes. At the only two visitations which, it is known, the Wardens attended, they were required upon oath to report at the next visitation the conduct and character of the incumbents, the condition of the parish property, and any infringements of the laws relating to Sabbath-breaking, and other immoralities. Vestrymen and Church Wardens who refused to serve without good excuse were fined one thousand pounds of tobacco.

The "Principal" summoned the Vestry meeting, but, that "nothing might be done unawares," the first Tuesday in each month was Vestry day. At "eleven of the clock, forenoon," the Vestry met, and three constituted a quorum. In some large parishes it was the custom, for convenience, to meet after service on Sundays. Usually there was a small Vestry-house, either adjoining or close by the church. Absent members could be fined. Some Vestrymen, for lack of something better to do, spent their time at meeting in fining their absent

* An Historical Sketch of Anne Arundel County. By Rev. Theo. C. Gambrall, 1876. Under the tobacco Act of 1728, the Church Wardens were ordered to summon a Vestry meeting to fill vacancies in the number of counters.

brethren. As a rule such fines were remitted at the next meeting.

After a long ride through the wilderness, the Vestrymen did full justice, no doubt, to the provisions for their refreshment. In one parish "a quart of rum and sugar equivalent" and "as much diet as would give the vestry a dinner" was prepared by the sexton, at the expense of the parish. As this custom caused after a time "great scandal," it was abolished, and each Vestryman was required to furnish his own dinner.

The proceedings of the Vestry were recorded in a book by the clerk or register, chosen and paid by the Vestrymen. The register kept also an account of all births, marriages and funerals in the parish. Any one failing to give notice of such occurrences in his family, was liable to be fined. Refusal to make an official entry in the register book was punishable by a fine. A small fee was given the clerk for searching a record, or for giving a certificate. Notices of Vestry meetings, or concerning other parish matters, were sent by the clerk, who also presented at court the pleas of the Vestry.

Vestrymen were the guardians of parish property and the censors of parish morals. If the church buildings needed repairs or additions, the Vestry contracted for improvements. If the Vestry had not sufficient means to pay parish charges, it petitioned the County Court to levy a tax. This tax could not exceed yearly ten pounds of tobacco per poll. As a parish became more thickly settled, or if the church was not convenient to all parishioners, the Vestry summoned them to decide whether a chapel of ease should be built, and if so, where. If a chapel was desired, a petition was sent to the Assembly for an Act authorizing the parish to erect one. Voluntary subscriptions or taxes imposed by the County Court paid for the building of churches and chapels. The sites selected for these edifices were generally near springs or wells, in order to save the trouble of carrying water. The land was, perhaps, given outright by some piously disposed parishioner, and if there was a doubt as to how much had been given, two acres

were surveyed and appropriated for the purpose.* Sometimes the Vestry bought the land. In the laying out of Maryland towns, places were left for a "church, chapel, market-house, or other public buildings." In Annapolis three lots were reserved, one for the use of the minister, one for the sexton and parish clerk, and the remaining one for the Vestry's clerk and the Commissary's clerk.

Before the churches were erected services were held in the court-houses or in private residences. Even when there was a parish church, such places were used for worship, in order to reach every parishioner. The churches were usually built of wood, but some were of bricks or stone. The church at Annapolis, as early as 1704, had a belfry and a bell, but most churches were plain structures devoid of such luxuries.† Besides, in a parish containing at least thirty square miles, a bell would have been of little use for calling together the congregation. The interiors were equally free from ornamentation. For some time many churches were without flooring save the bare earth, and they were not even plastered or glazed. As the parish prospered, floors were made of wood, bricks, or tiles. The pulpit was at one side and the chancel at one end. There were also a reading desk, or "pew," and "a place for the clark to sit in."

The pews were high-backed, with seats around three sides, and sometimes had doors which were locked against intruders.

*Bacon, 1704, Chap. XXXVIII, and 1722, Chap. IV.

†The Rev. Jonathan Boucher wrote in 1771 an epistle from the old church at Annapolis. It appeared in the *Md. Gazette*, and the following is an abstract:

"And often have I heard it said
That some good people are afraid
Lest I should tumble, on their head,
Of which, indeed, this seems a proof,
They seldom come beneath my roof.
* * * * *
While I alone, not worth your care
Am left your sad neglect to bear;
Here in Annapolis, alone,
God has the meanest house in town."

The pews were either "built" by individuals, who had obtained the sanction of the Vestry, or bought from the Vestry at public auction or private sale. As they were very large, some of them seven feet by five, few could be built in the church, but, as the congregation grew, galleries were erected, and in them bench pews were placed. In 1774, an Act allowed the Vestry of St. Ann's Parish to build a new church.* By this Act, it was ordered that pews should be made to accommodate the Provincial officers and Assemblymen, strangers, the incumbent, Vestrymen, and Church Wardens. Those who subscribed most towards the building-fund were to have the preference in the choice of pews, and no one subscribing less than twenty pounds sterling was entitled to a choice. No person could have more than one pew. Galleries were to be built, one for the use of parishioners in general, one for servants, and one for slaves. It was the duty of the sexton to keep in good order the church and churchyard, and sometimes to hang the greens in the church at Christmas, Easter and Whitsuntide. He also attended to the digging of the graves, and, if a married man, undertook to keep the church linen clean. One sexton employed himself in teaching school in the Vestry-house. It was not a rare event for a woman to be sexton.

In every parish church in Maryland, the Vestry was obliged to set up a table of forbidden marriages, and to do all that was possible to prevent infringements of such laws. The Vestry of St. John's Parish, Baltimore County, cited one man to appear and explain his marriage with his deceased wife's sister. Another was summoned for uniting himself in matrimony with his late wife's niece. Both failed to justify themselves, so the clerk was ordered to present them to the County Court. Where there was no rector, the Vestry chose a reader, and paid him from the proceeds of the clergy-tax. A committee, consisting of the "principal Vestryman [here

* Hanson, 1774, Chap. XI.

the oldest] and four of his brethren of longest standing," had to render to the Governor an account of all expenditures of the poll tax during a vacancy in their parish, but this law was not unfrequently neglected. The committee was no doubt suggested by the Reeve and four best men who represented the old English town or parish.*

In the year 1728, an Act was passed restricting the excessive production of tobacco.† Although it was disallowed, its provisions were carried out for a space of three years. Each Vestry, having divided its parish into "precincts," appointed for each, two counters, or tellers, of tobacco plants. The counters appeared and signified to the Vestry their acceptance, and the names of those who refused to serve, without good reason, were presented by the register to the County Court. Previous to 1728, the Vestry had been connected in another capacity with the tobacco interest, for Vestrymen and Church Wardens were included among the officers who could arrest persons attempting to "run" tobacco from the Province.‡ Some years later Vestries nominated inspectors§ of the staple. From these nominees, who had to be "able and sufficient planters well skilled in tobacco," the Governor made his appointments. No inspector could vote at the choosing of his successor.|| It is obvious why the Vestries were concerned in this question. Their main source of revenue was the tobacco, and it was to their interests to see that it did not become depreciated.

*See "Constables." By H. B. Adams, p. 11.

†Bacon, 1728, Chap. II. As this Act was disapproved it is not given in full in Bacon's Laws, but it may be seen in the Hist. Coll. Amer. Col. Ch. Md., pp. 270-280.

‡Bacon, 1722, Chap. XVI.

§An interesting review of the inspection laws of Colonial Maryland is to be found in the Brief of Charles J. M. Gwinn in the case of *Turner vs. State of Maryland*, U. S. Supreme Court, October Term, 1882. See Note in University Circulars, February, 1883.

||Bacon, 1768, Chap. XVIII.

In the young colony inhabited by all kinds of characters, it is not surprising to learn that immorality was prevalent. But means were at hand to restrain workers of iniquity. Persons suspected of immoral conduct were summoned before the Vestry, "to show cause why they should not be prosecuted." Some would promise to marry, others to separate. It is curious to note that a month's time was frequently allowed, in which such arrangements were to be consummated. This may be explained by the fact that, in many instances, the offender was a bachelor with his housekeeper, and, in case of separation, he had to provide himself with a substitute. If the Vestry's summons was disregarded, the guilty parties were admonished by the Minister; or by a deputation from the Vestry. If the evil practices were still continued, information of such a state of affairs was sent to the clerk of indictment at the County Court, where the fact of admonition already given was sufficient evidence to convict offenders. Adulterers and the like were fined, or, in default of fine, could be whipped till the blood ran, but, after 1749, corporal punishment for these offences was abolished. Persons who swore in the presence of a Minister, Vestryman, or Church Warden, were subject to a fine. Any of these officers could commit to the stocks for an hour such an offender who did not pay his penalty, or could appoint, in the absence of a Constable, a deputy Constable to whip the aforesaid. The lashes could not exceed thirty-nine at one whipping.

For certain misdemeanors, penance was done. The Rev. Mr. Wilkinson wrote in 1724, "It has been owned by many that there was a visible reformation on our shore, the sight of one person performing penance struck a greater terror upon all offenders than all the pecuniary and corporeal punishments which the secular courts inflict, as some of 'em have publicly acknowledged."* The following is an account of such a performance: "The fifth day of July last came James Campbell

* Hist. Coll. Amer. Col. Ch. Md., p. 244.

to ye Communion table and asked pardon of Col. Blay and Mr. William Comegys for calling them murderers of ye parish: at ye same place the aforesaid Campbell did condescend to pay what Charge should Increw upon the writ that was served upon him for his fault."* The Vestry of St. Thomas' Parish cited men for running their mills on Sundays. The ecclesiastical censure neither injured the offender in property or person, nor relieved him from further prosecution by the civil authorities. That the excuse of ignorance might not be made, every Minister was required to read from the chancel four times a year the penal laws of the colony.

After Braddock's defeat it was thought necessary to take special measures of defence against the Indians, who in roving bands had come very near the settlements. Accordingly, to pay for an increase in the militia, taxes were laid upon some additional items, among these, "batchelors." The Vestry prepared every year a list of all such delinquents in the parish, who were over twenty-five years old. This list was then fastened upon the church-door, (which, in Maryland, was the usual place for advertising parish business), and when revised and corrected was sent to the Sheriff of the county.† Among the "taxed bachelors" in 1760 were Gov. Sharpe, Messrs. Husband and Love, and the Rev. Mr. MacPherson, rector of St. Ann's, Annapolis. Although the clergy were not legally taxable, yet a number of them appear to have suffered from this imposition upon poor, lone bachelors. The Act continued in force for eight years when it ceased by limitation.

* Old Kent. By Hanson, p. 355. Penance is still done in England:

"An extraordinary scene was witnessed on Sunday evening July 30, at All Saints' Church, East Clevedon, when a man named Llwellyn Hartree did public penance for the seduction of a servant girl, who now awaits her trial for manslaughter. The church was crowded and the vicar having delivered an address on Church discipline, Hartree confessed his sin and promised to take his place in the Assize Court next to the unfortunate girl upon her trial at Wells." P. 126, "Notes and Queries," Aug. 12, 1882.

† Bacon, 1756, Chap. V. Mills were also used as places for advertising such matters.

Many Marylanders no doubt owe their existence to this tax, for it was, to say the least, an incentive to matrimony. Many names appear but once in the list, and it is to be presumed that their owners had resolved to choose the less of two evils. It was perhaps because "misery loves company," or possibly from the belief that "in union is strength" that this persecuted class sought refuge at church in "bachelors' pews."

As regards the parish poor, colonial laws and local records afford comparatively little information. Legacies were occasionally left to the Vestry for the benefit of the poor, by whom were no doubt meant needy ones connected immediately with the parish church. Where there were endowed public schools, the parish had generally the right of sending a certain number of "charity scholars." It was the law that masters of these schools were to be licensed by the ordinary, and were to teach their scholars the Catechism, and were to bring them to church on Sundays and Holydays. The "Charity School" founded by the indefatigable efforts of the Rev. Thomas Bacon was aided in some measure by "collections at the Offertory on Sacrament Sundays." To this school negroes could be sent and taught to "Read and Write and instructed in the Knowledge and fear of the Lord, gratis; but maintained at the Expence of their respective Owners."* After a great fire in Boston (1760) appeals for help were made to Maryland. Gov. Sharpe ordered collections to be made in all the churches, and his proclamation met with a liberal response. Of the amount raised, members of the Established Church contributed five-sixths. These are examples of the church charities of early times, and they differed little in principle from those of the present. The Vestrymen were also the bankers of

* Bacon's "Sermon, &c.," Lond., 1751. The negroes were not neglected in spiritual concerns. As often as was convenient in some parishes they were instructed and catechised, and baptized. Many were communicants in the churches.

the parish and lent money at the rate of four per cent. interest.*

Thus parish life went on, and the parishioners were instructed in the school of liberty by exercising what little local government they possessed and in the interchange of opinions at the Easter elections or in the closer assembly of the Vestry. But, from its beginning, the Established Church in Maryland met with opposition. Romanists and Dissenters very justly considered that it was an injustice for them to be called upon to contribute towards the support of an alien ecclesiastical system, whose evils but not whose goods, they were accustomed to share. Intelligent observers perceived that the clergy were likely to become demoralized by their connection with the civil authority. The ill-feeling was expressed in many ways. In 1763, the salary of the Minister was reduced one-quarter.† This was done under an Act for improving tobacco. Inasmuch as many planters had been wont to reserve the worst of their tobacco for paying the clergy-tax, it is to be hoped that a reduction of the Minister's salary was a premium upon giving him better tobacco. Efforts were made to increase the number of the parishes, and thereby to decrease still further each incumbent's stipend. Then were passed the laws of 1771 already mentioned.

The underlying cause of this discontent was the strong sentiment of the people that the existing parish system was an infringement of their rights as freemen; and this feeling, without doubt, helped to strengthen that opposition to the mother country, which resulted in the American Revolution. The parish had aided the cause of independence in two par-

* In the "Annals of Annapolis" it is stated that in 1696 Major Edw. Dorsey reported that there was in *Banck*, for building the church at Annapolis, 458 pounds sterling.

† In 1780 it had been decreed that one-quarter of the Minister's salary should be paid in grain or other commodities. The prosperity of the colony, however, had rendered this law in-operative in reducing the value of the livings.

ticulars. It had preserved for its adherents the memories of their old English liberties, and by its manifest evils, had taught its opponents to view with jealousy any attempts of England to interfere with the local affairs of the colonies. Having accomplished these things, it had done its best work, and was no longer needed.

A fair idea of the state of the parishes at the outbreak of the great struggle, can be obtained from a perusal of the following extracts from the writings of a clergyman of Maryland: * "Our churches in general are ordinary and mean buildings, composed of wood without spires or towers or steeples or bells, and placed for the most part (like those of our remotest ancestors in Great Britain) no longer perhaps in the depths of forests, yet still in retired and solitary spots and contiguous to springs or wells. . . . In both Maryland and Virginia there are not six organs; the psalmody is everywhere ordinary and mean and in not a few places there is none . . . at present most of our parishes have two churches in which duty is alternately performed . . . in several parishes there are three. Between the list of taxables as set down in the sheriff's book, and what the incumbent actually receives it is well known there is a wide difference. . . . We have but fourty-four clergy. . . . The utmost that the most able and careful of the clergy in Maryland can expect is to live decently in a private way, and to educate their children in such a manner as that by their own industry and a small portion they may be able to live above contempt when we are gone."

The lack of entries in many record books during the next three or four years, serves to show the blank which then existed in parish life. During the Revolution the Church in

* "A View of the Causes and Consequences of the American Revolution, &c." By Rev. Jonathan Boucher. London, 1797, pp. 232-234. Mr. Boucher was a loyalist and received harsh treatment at the hands of his parishioners. A short sketch of his life is given in Neill's "Notes on the Va. Col. Clergy," p. 29.

Maryland lost considerable ground for various reasons. Many of the clergy considered that they were still bound by their oath to the English government. These, and others from choice, adhered to the royal cause and endeavored to induce their congregations to do the same. Consequently great numbers left the Church, and attached themselves to Methodism, which was just beginning to thrive in America. In the "Declaration of Rights," adopted in the Maryland Convention of 1776, it was ordained that no County Court should thereafter levy a tax upon application of a Vestry, or of Church Wardens. The legislature might, however, impose a general tax for the support of the Christian religion, but each person could denote for what denomination his quota should be expended. The property of the Church of England remained in the possession of the parishes, but even those who stood by the Church were too much occupied with the more momentous questions of the time to give much heed to parish matters. The loyal clergy vacated their livings, and the churches thus deprived of their rectors began to decay. The Ministers who remained, being without an assured salary, had to make great shifts to support themselves.

The attention of the Assembly was called to this sad state of affairs, and it passed a new Vestry Act. In a "*general meeting*," the legal voters of a parish, who had paid parish charges, elected *seven* Vestrymen "for the preservation of the church, care of the glebe, and for the happiness and welfare of the state." Their civic duties were taken away, although the Wardens kept the peace in churches, and could eject from them any disorderly persons.* The names of many of the old members now reappear in the record books, but the titles of "Colonel," "Major," &c., have been added. The members of the Vestry now chose their Minister, and paid him by the subscriptions of the parishioners. Grain was the principal commodity used in payment of such debts. This was col-

* Hanson, 1779, Chap. IX.

lected through personal application by the Vestrymen. The Minister controlled the glebe (which was vested in the Vestry) during his incumbency. When any improvements were made, some parishioners contributed material, others their services. Sometimes the glebe was rented, in which case the lessee agreed generally to improve it.

In 1798,* another Act became the law upon which is based the present existing Vestry system of Maryland; for, later laws referring to the incorporation of religious bodies have the proviso that nothing therein contained shall affect the election of Vestries according to the usages of the Protestant Episcopal Church. Although this Act is easy of access, it may be well to mention the most important features. Eight Vestrymen were elected, the former Vestrymen being the judges of election. All Vestrymen and Church Wardens took the oath of fidelity to the Government, professed belief in the Christian religion, and subscribed to the oath of office. The first Monday in February, May, August, and November was the legal Vestry day. Four members constituted a quorum. The Minister was chairman and collected the votes. If there was a tie he had the deciding voice, unless he was personally interested in the result. The Vestrymen chose the Church Wardens, and "called" their rector. The Vestry was a corporate body, but could dispose of no church property without the consent of both of the Wardens.

At present Vestries are governed by the provisions of their charters, if they have any, which conform generally to the Constitution and Canons of the Diocesan Convention. Parishes still exist as geographical divisions, and there are also "separate congregations" whose Trustees are called Vestrymen. For example, St. Paul's Parish is Baltimore City and a part of Baltimore County. But within this parish are more than two dozen congregations. The power of constituting,

* "A Compilation containing the Constitution and Canons of the P. E. Church in the Diocese of Md., &c.," pp. 73-104.

dividing and uniting parishes is vested in the Convention of the Diocese. Many of the old glebes have been sold, and in some parishes the proceeds have been converted into stocks or bonds. Where there is a glebe, the Minister sometimes farms it, for the country clergy are not the best rewarded individuals. There are eight Vestrymen, four of whom are voted out and their places filled at congregational meeting on Easter Monday in each year. Vestrymen are reëligible and are generally continued in office. Very often the meeting of the congregation consists of the members of the old Vestry, who solemnly reëlect themselves. It is on record that at one meeting in Baltimore the only persons present were the two Wardens, who appointed each other chairman and secretary, respectively, and elected the Vestry. The Vestry elects two Church Wardens either from their own body or from the congregation. The Wardens, if they are not also Vestrymen, cannot vote in Vestry meeting, but can take part in discussions. In city churches, one of the Wardens makes preparations for the celebration of the communion, but in the country it is a matter of convenience as to which of the officers of the church shall attend to such matters. The Wardens may assist at the offertory. They notify the Bishop of the election of a new Minister, and may also certify the election of lay delegates to the Convention, but the Register of the Vestry generally does this. Although the powers of officers of the peace were taken from the Wardens in 1802, nevertheless, as representatives of the Vestry, they still have the ancient right of keeping order in church, and are objects of terror to small boys or other disturbers of public service. The Wardens are also the custodians of the church property.

The parish of Maryland, which was originated here for religious purposes, but which, as an institution by English people, naturally possessed some of the historical features of the old English parish, gradually severed its connection with civil matters, until to-day it exists for the furtherance of ecclesiastical objects alone.

EXTRACTS
FROM THE
PARISH RECORDS OF MARYLAND.*

PRINCE GEORGE'S PARISH.

Whereas at the Request of the Inhabitants of the Eastern, Branch and Rock Creek, The Reverend M^r John Frazer did appoint this present day being the 18th day of September 1719, For the said Inhabitants to meet in order to make Choice of a proper place for building a Chappel, and Contributing towards building the same.

And forasmuch as very few of the Inhabitants are met on this Occasion, those therefore present, to prevent delays have thought fitt to Subscribe their Names, and what Sums they are willing to give, and have Nominated the place they think most proper, Leaving Room in said Collum for other of the Inhabitants to Name what place they think more Convenient, that so a proper place may be pitch'd upon by the Majority.

Benefactors Names | £ | s | Tob^d in £s | Proper place for build.

December the 3^d 1726

Then met the freeholders of Prince Georges Parish at the Parish Church at Rock Creek, As is directed by Act of Assembly to Choose Vestry Men, and other Parish Officers, And accordingly they made Choice of the following Gentlemen to be Vestry Men, (viz^t) M^r Nath^l Wickham Jun^r M^r John Powell, M^r James Holmeard, M^r John Flint, M^r Joseph Chew, and M^r John Pritchett. And for Church Wardens M^r Caleb Lutton, and M^r W^m Harbin; and they Qualified themselves for their Places, by taking the Several Oaths as the Act of Assembly directs for Such Officers to take.

After the Election was over, the Gentlemen of the Vestry met, and made Choice of Will^m Jackson, for their Register, and appointed to meet again on Fryday the 16th December 1726.

*These extracts from Maryland Parish Records have been published through the kind cooperation of gentlemen in Baltimore, and, it is hoped, will excite enough interest to bring about a more general movement towards the publication, not only of decaying parish records, but also of many other ancient documents, which if not rescued now will soon crumble to pieces.

Fryday December the 16th 1726

The Gentlemen of the Vestry met according to appointment (all present) and agreed to allow W^m Jackson Eight hundred pound of Tobacco ^{per} Annum for being Register, and likewise ordered that a Letter Should be forthwith Sent to M^r John Bradford desiring the favour of him to meet them at the Parish Church, on the 3^d day of January 172⁷ about the land the Parish Church Stands on, to make it over.

Tuesday the 10th January 172⁷ *

The Gentlemen of the Vestry according to appointment met all present. And Invested M^r George Murdoch as Rector of this Parish, he behaving himself well and doing his duty, duely, and truely, as an Incumbent ought to do.

His Induction from his Excellency to the
Gentlemen of the Vestry

Maryland ss^t

Charles Calvert Esq^r Governour of
Maryland, and Commander in Chief &c.
To the Gentlemen of the Vestry of Prince
Georges Parish, in Prince Georges County
Greeting.

Whereas the Reverend M^r George Murdoch an Orthodox Minister of the Church of England, was sent and Recommended by the Lord Bishop of London and Diocesan of this Province to officiate as such in Virginia or Maryland, I do therefore Recommend and appoint the said George Murdoch to be Rector of your Parish, and direct you to Recieve him as Incumbent thereof, and will you to be aiding and assisting to him, in all things becoming, to the end he may Recieve the full benefits and Perquisites of his Office appertaining, together with the fourty ^{per} Poll arising within the Parish aforesaid.

Given at the City of Annapolis this 29th Day of December in the thirteenth Year of the Dominion of the Right Hon^l Charles Lord Baron of Baltimore, Absolute Lord Proprietor of the Province of Maryland, and Avalon &c. Annoque Domini 1726. And in the thirteenth Year of his Majesties Reigne

Cha Calvert.

* Until 1752, the 25th of March was observed in England as the beginning of the year. Most European nations had already adopted the reform calendar of Gregory XIII. (1572). The English, always slow to accept outside innovations, had retained the Old Style, but, for convenience in foreign trade, were accustomed to use both the Old and the New Styles between January 1st and March 25th. So January, 172⁷, means that it was in the year 1726, Old Style, but in 1727, New Style. For further information in regard to the change see the article "Calendar" Ency. Brit., Hening's Statutes, Vol. I, p. 393, &c., Mag. Amer. Hist., Vol. VIII, p. 223, also a pamphlet entitled "What New Doctrine is This?" and the Providence "Monthly Reference List" for October, 1882.

The following is a Copy of M^r. George Bealls
Obligation for his performance of the building the
Vestry House.

Know all Men by these p^rsents, that I George Beall of Prince Georges County in the Province of Maryland have agreed with the Gentlemen of the Vestry of Prince Georges Parish, to build a Vestry House 16 Foot long, 12 Foot wide overjetted, an Inside Chimney, the House to be 8 Foot pitch'd plank'd above and below, a plank door to the House, with Lock and key, and Iron hinges, the boards to be all drawn a Small plank Table, the House to be fram'd, and to find All Necessaries whatsoever, and to have it compleated workman like by Easter Sunday it being the 2^d day of April next ensuing the Date hereof, and to have for doing the Same, Two Thousand five hundred pound of Tobacco, if not Compleated and finished according to Agreement, to forfeit Five Thousand pound of Tobacco; Just Causes to the Contrary Excepted, As Witness my hand this 10th day of Janry 1724

Signed before the Vestry

Geo. Beall

Witness

W. Jackson Reg^r

April the 3^d 1727. Being Easter Monday the freeholders of the Parish met. According as the Act of Assembly directs to put out two of the Gentlemen of the Vestry, and to Choose two others in their Rooms and likewise two Church Wardens, They thought fitt to put of the Vestry M^r. Nath^l. Whickham Jun^r and M^r. John Powell, and Elected M^r. Will^m. Harbin and M^r. Thomas Lucas in their Rooms, and likewise Chose M^r. John Harding, and M^r. Grove Thomlinson Church Wardens for the Ensuing year, in the Room of M^r. Will^m. Harbin, and M^r. Caleb Lutton. And they Qualified themselves for their places by taking the Several Oaths as is Directed by Act of Assembly for Such Officers to take.

At the same time the Gentlemen of the Vestry Consented that M^r. Murdoch should preach to the upper inhabitants of the Parish, every third Sunday, in some Convenient place, they shall appoint.

Sunday the 28th May 1727. After Divine Service the Gentlemen of the Vestry met About Sending for Books for the Use of the Church; M^r. Jam^s. Holmeard offered to Send for them if the Rest of the Gentlemen thought fit, and they accordingly accepted his offer, and desir'd he would send for the following Books, (viz^t) One Large folio Church Bible, Two Large folio Common Prayer Books, and he Should be paid in Tobacco at 1^d ³/₄ pound.

Tuesday the 15th August 1727.

The Gentlemen of Vestry according to appointment met (all present) to treat with workman about Erecting Pews in the Church, and they

Agreed with M^r Mingelde Page to Erect fourteen Pews, and to alter the Desk, and to make it less, and to make a place for the Clark to Sit in . . . and to pay him Five Thousand Pounds of Tobacco for Doing the Said work.

And likewise agreed to pay M^r George Beall Three hundred pounds of Tobacco, for puting up two new Girders in the Church.

And likewise to pay M^r Nehemiah Ogden Three hundred Pounds of Tobacco for Iron work for the said Girders.

And likewise to pay M^{rs} Mary Ann Powell Two hundred and fifty Pounds of Tobacco, for a Dyaper Cloth, and two Napkins, for the Communion Table.

And likewise to pay William Jackson One hundred, Sixty Eight Pounds of Tobacco, for a book to Record, the Several proceedings of the Vestry.

Tuesday the 21st November 1727.

At the same time they agreed to pay M^r Grove Thomlinson Church Warden Two Hundred and Sixteen Pounds of Tobacco for Wine for the Sacrament, due from Easter to this time.

And likewise to pay Owen Read Three Hundred Pounds of Tobacco, for Digging a Well, and making a back in the Vestry House.

And likewise The Reverend M^r George Murdoch agreed to pay the Gentlemen of the Vestry, for the Use of the Parish, Two Thousand Pounds of Tobacco upon Condition that he might Recieve the fourty ³/₄ Poll, for the whole Year, when but Eleven Months his due, which amounts to the said Sume ³/₄ Month, which they agreed too.

May the 15th 1729

The Gentlemen of the Vestry, and the Church Wardens of the Parish met, pursuant to an Act of Assembly, to Nominate, and appoint Counters to Count Tobacco Hills &c^s in the Several Hundreds in this Parish

And accordingly they Nominated, and appointed, M^r Thomas Fletchall, and M^r Alexander Magruder to be Counters for Potomack and Minocezy Hundreds.

And Likewise M^r James Beall, and M^r Nicholas Baker for the Eastern Branch Hundred

And M^r Thomas Lucas, and M^r Thomas Lamar, for Rock Creek Hundred

At the same time Orderd that William John Jackson be paid Eight Hundred pounds of Tob^o for a Years Salary for being Register, and finding paper &c^s for the use of the Parish.

And Likewise Order'd that Grove Thomlinson Church Warden be paid One Hundred, and fourty pounds of Tobacco for Wine for the Sacrament, & his Extraordinary Trouble in fetching it.

And Order'd that no Churchwarden hereafter be paid anything for their Trouble &c^s

June 29th 1731

Order'd that the three Hogsheads of Tobacco Rec'e'd of the Sheriff on the Parish accompt Be Shipt to M^r Isaac Milner Merchant in London on the Parish Risque and that the following Goods be Sent for, (for the Produce of the Said Tobacco) for the Use of the Parish Church.

Five Casements three Inches long, and Seven Inches Wide

Five lights Thirty Inches Long and Seventeen Inches Wide

Ten lights Twenty one Inches long and Seventeen Inches Wide

Two lights Twenty Inches long and Eleven Inches Wide.

And a Surplice.

Order'd that Ralph Lannum be Paid Fifty pound of Tobacco for Rolling one of the Said Hogsheads.

Febry the 7 1733

.... Order'd that Summons be Issued for Nehemiah ——— and W^m ——— to appear before the said Vestry on Easter Monday....

Easter Munday March y^e 26th 1733

... Also Nehemiah ——— and Mary ——— not Appearing According to Appointment to Clear themselves of the Suspicion of Fornication were Order'd to Seperate &c.

March y^e 31th 1733

Then Benj^a Murdoch Clark of the Vestry Pursuent to the Above said Orders Concerning Nehemiah ——— & Mary ——— & William ——— & Grace ——— did Serve them &c.

On Whitsun Munday May y^e 14th 1733

Also Neh. ——— Appear'd & Said he was Married to the Woman that he is Accus'd of Living in Fornication with but could Shew no Certificate nor any other Proof but Said Since the Vestry was not Satisf'd he was willing to be publish'd And Mari'd Over Again which the Vestry thought fitt to Consider Upon & that providing that the Woman would Goe in A Short Time and swear before a Magistrate that She knows nothing of her Husband being alive. It should be done otherwise to proceed according to Law.

A Coppy of Mary ——— Oath.

Prince Georges County Augst 8th 1733

Then came Mary ——— before me one of his Lordships Justices of the County Court & made Oath on the Holy Evangelists of Almighty God that She had not Seen or heard from her Husband William ——— Either by Letter or Proxsey for this Eight or Nine Years bygone & doth not at this Time Believe he the Said William ——— is Alive Sworne before me Date Above Written

Jos: Chew.

On Munday November the 5th

Then it was Agreed that Nehemiah —— & Mary —— should be Presented the Court Ensuing if he be not Married before that Time.

Easter Monday April y^e 7th 1785.

Also Agreed with M^r John Bell Churchwarding To Allow him foure hundred & fifty lb of Tobacco for finding Bread & Wine for the Sacrament & taking Care of the Linning and Vessels for the year Ensuing.

May y^e 6th

1785

Then Agreed with Bingle Page and Benjamin Perry to Build a Gallery fitting it with Seats as Maney as is covenant and to be done workman like likewise to put Eight good Substantial new Blocks of Locas or Chestnut well Season'd to the Said Church and also to put Six good blocks to the Vestrey house in the roome of those that are alredey there qualeffed as the other before mentiond and to have for the Same Six Thousand pounds of Tobacco (makeing good the Wether bording of the Church and the West dore) to have it Compleatly finished by the twenty fifth of December Next on the penalty of Nine Thousand pounds of Tobacco.

Oct^r 7^e 14th

1785.

Then it was agreed with the Rev^d George Murdock that he Should pay for two years Quit-Rent for the Glebe-land (Viz) Eight Shillings Sterling to M^r William Diggs and be Deducted out of what he owes to the Parish.

Nov^r 7^e 5th

1785

Likewise that Notis Should be given to the freeholders &c And Notes Set up that on the first Tuesday in Dec^r the Vestrey to meete to agree about the Sale of the Pewes.

Sept 7^e 28

1740

At the Same time the Rev^d George Murdock Brought In the following Account (Viz)

	£	s	
To 10½ Ells of Holland for a Surplice }	7	9	0
at 14 Shillings ¾ Ell			
To Making	1	10	0
To Thomas Willson for survaying }	1	0	0
the Chap ^l Land			
To George Murdock for Commone Truble	1	0	0
	10	19	0

which was agreed that he Should have an order on William Murdock Late Shrieff and Accordingly had one for the 8d Sum (Viz 10 pound Nineteen Shilings

Nov^r y^o 18th
1740

... and at the Same time M^r Francis Finn brought a Letter from M^r John Prichard with this Subscription

For the Lay Gentlemen of y^o Vestrey of Prince Georges Parish.
Which was orderd to be Recorded & is as followeth
Gentlemen

I Reced a Letter from John Flint who stiles himself Clerk of y^o Vestrey and by Your Order requires me to Attend y^o Vestry to Morrow to clear Myself of a supition of my living in Adultery I look upon my Answer in writing to be as Sufficient and as clear as if I was before You. And therefore deny the charge, If I could Possibly leave my sickly Negro family and with convenience be absent from my buisness In Attending my Store I would however wait Upon you Gentlemen of the Laity.

But whilst your Rector is there I hope to be Excus'd for that I look upon the Censure to proceed from his malice and Vexatious temper, in the intervalles of his want of y^o right use of his sences the deprivation of which at some times he is Deem'd to be under in the opinion of Severall of his Brother Clergymen and Severall Gentlemen in this & the Neighbouring County Therefore I do not think proper to Attend Your Sumons whilst he is present.

I am with due Respect Your most
hum Serv^t

Nov^r y^o 17 1740

Jn^o Prichard

And the Vestrey thought fit to Refer their opinion whilst the third tuesday in December.

June y^o 7
1748

Likewise agreed to lend Samuel magrouder y^o 3^d Twenty five pound at 4 ^{pp} Cent ^{pp} Annum.

And Ninnian Maugrouder Six pound at 4 ^{pp} Cent ^{do}

And John Flint Six pound at 4 ^{pp} cent ^{pp} Annum

And John Claggett thirty two pound at 4 ^{pp} cent ^{do}

And all off them to give Security for the payment of the Same to the Said Vestrey with the Intrest due thereon according to their severall Sum^s and time.

Octob^r y^o 4th
1748

Then the Gentlemen of the Vestrey met Prosent

And did Nominate and Recommend for Inspectors At M^r George Gordon^s warehouse at the mouth of Rock Creek The following Gent^l men (Viz)

Cap^t Alexander Maugrouder

Mess^{rs} Josiah Beall

John Clagget

Alexander Beall Son of Will^m Beall

Likewise for Bladensburg

Mess^{rs} Samuel Beall Jun^r

Nicholas Baker.

Mar y^o

27 1749

Then came the folowing Certificacon

Prince Georges County Decem y^o 5th 1748

Mary Land as:

I Hereby Certifie that this day Came before me The Subscriber one of his Lordships Justices for the County aforesaid Alex^r Beall and Qualified himself by takeing the severall oathes to the Government as Alsoe the oath of Inspector and Declard the test & Subscrib'd the same and the oath of Abjuration

Sworne before Jn^o Cooke

To the Vestrymen & Church }

Wardens of Prince Georges Parish }

May y^o 12

1751

And at the Same time Orderd that I Should Acquaint his Excellence with the Death of Alex^r Maugrouder one of the Inspectors for Rock-Creek Inspecting house and who was the Next Nominated for Inspectors

Likewise to set up notes to Acquaint all the freeholders to meet the Vestrey the first Tusday in June for to Chuse one for a Vestrey man in the Rome of Alex^r Maugrouder being Dead, and for any Carpenters that will undertake the Raileing of the Chappel yard and the Chancel to meet at the Same time And place.

July y^o 20

1756

Then the Gentmen of the Vestrey met pressent.

And after taking the Oath Appointed for that Purpose did Nominate the Batchelors in the Said Parish aged Twenty five years and upwards with the place of abode and Value of there Estate.

April y^o 18th

1757

Memorandum that John Tyson Bought a Botle Screw of M^r Rob^t Mundell on y^o Parish acc^t price on Shiling.

Tuesday December 4th 1759

. . . . at Which time the Reverend M^r Clement Brooke Informed the Vestery that the Reverend M^r George Murdock had Employed him the Said Brooke as his Currate to Officiate in his the Said Murdock's Parrish. The Vestery not being fully Satisfied Concerning the Matter In Dispute between the Reverend M^r Thomas Johnson and the Reven^d M^r Clement Brooke Thought Proper to Adjourn to the Reverend M^r George Murdock's house on Saturday the Eight Instant In Order to Take Moore fuller Instructions from him the Said Murdock he being very Ancient and Incapable of Attending the Vestery.

June 27th 1768

Att Rcreek Chaple

. . . . att the same Time the Vestry agrees that Mess^r James Burnes and Edward Villers Harbin do meet at Geo. Town On the 25th day of July in Order to Expose the Parish Tobacco to Publick Sale and that Simon Nicholls Advertise the Same.

Tuesday March 24 1767

Order that Simon Nicholls Purchas at the Cost of the Parish One of the Rev^d M^r Bacons Body of Law for the use of Said Parish.

ST. JOHN'S PARISH, BALTIMORE COUNTY.*

[July 30, 1739.]

Then did the Reverend M. Bourdillon inform this Vestry that it was his Excellency the Govenors pleasure to Call him to Afficiate in Another parrish and that he did resign Up to his Excellency this parrish. . . .

[July 8, 1740.]

M^r Richard Caswell being Elected a Vestry man last Easter Munday for this Parrish but he being Corroner is not oblided to Serve in said Office Therefore it is now ordered that the Clerk putt up notes for the Parritioners of said Parrish to meett in the Town of Joppa on the first Tuesday in August Ensuing in order to Chuse a Church Warden.

[May, 1742.]

Ordered notes be put up to employ any person that will undertake to make and bring To Joppa Twelue Thousand bricks †

*In the extracts from the books of St. John's and All Saints' Parishes, the dates in brackets are merely for the sake of reference and are not a part of the original record.

† Many of the old churches in Maryland were built of bricks brought, it is said, from England. But all bricks used in the Province were not imported, as the following facts

[June, 1742.]

M^r William Dallam agreed with the vestry to deliver Twelve thousand bricks at Joppa Town in the parrish Church yard & to be viewed by Two of the Vestrymen who shall be At that time quallified According to Law & if s^d Bricks be Approved of by the Two Vestrymen as Afor^s^d to be good & Sufficient then the Vestrymen do agree to pay the said M^r Dallam thirty Shillings Currant money £ thousand.

[Oct. 4, 1748.]

The Vestry agrees that Superscription should be offered to the Inhabitants of this Parrish in order to Raise as much Money as will Build an Addition to the North-side of the church.

[Apr. 8, 1744.]

Ordered that Summons Issue for Jacob Jackson and his present wife who was Neace to his Deceased wife to show cause if any why they shall not be prosecuted According to Law, for Marrying contrary to the Table of Mariage.

[May 1, 1744.]

Jacob Jackson and his wife appearing According to a summons Issued from the last Vestry returnable here now, and haveing no Legall Defence to make and it fully appearing that they have Married contrary to the Table of Marriage it's ordered that there be an Information made thereof to the Next county Court to be held for Baltimore.

John Leatherbury agrees to do the Brick work of a Vestry house for which he is to have Thirteen shillings £ Thousand for Laying the Brick and to find himself Diet and Lodging he is to Begin the said work by the Twentieth of June & have it finished with all expedition

[May 5, 1747.]

The vestry have agreed with M^r Walter Tolley to make Twenty thousand bricks to Be merchantable and delivered in the church yard at or upon the Twentieth Day of July next for which he is to be paid thirty Shillings currant money £ Thousand.

[June 2, 1747.]

The vestry here present have agreed with James Sage to lay about twenty thousand bricks in Two porches by way of buttments to the church for which they are to Allow him at the Rate of Ten Shillings £ Thousand the vestry finding him Accommodations and Attendance the Work to

clearly prove. As early as 1694, a contract was undertaken by a resident of Kent Island to *make* a certain number of bricks for building a church. Of course these bricks were in quality inferior to the imported ones, but the people were not so ignorant of the resources beneath their feet as some suppose. However, bricks were valuable and the total disappearance of certain old towns may be explained by the fact that, when all the townfolk sought a more favorable site, they carried the bricks of their houses with them.

begin so soon as the bricks Shall be burned and ready the said James to be paid for said Work three months after finished.

[August, 1747.]

M^r John Day son of Edw^d Appears & declares he keeps a publick house is therefore Exempt from the office of a vestryman and is from this day by the vestry here Present discharged from said office.

[April 11, 1748.]

M^r Thomas Gittings is by the majority of y^e parrishioners here present chosen As a vestryman to Serve in said Office three year's from this date According To Act of Assembly.

[July, 1748.]

Ordr^d that the clerk put up notes to Advertise that the ground in the new Addition to the church Whereon may be built Ten pews 7 feet deep & 5 feet wide is to be sold at said parrish church on the first tuesday in August next at three clock in the Afternoon by Way of publick vandue to the highest bidder or bidders for curr^t or Sterling money.

[April 3, 1750.]

Ordered that publick notice be given that no person presume to break any of the Church ground on any pretents whatever before Applying to the Sexton.

[June 4, 1751.]

Robert Price has an Order on M^r Thomas Sheredine high Sherriff of Baltimore county for the Quantity of five hundred pounds of Tob^o being for his Acting as Sexton for this parish One Year.

[Aug. 4, 1752]

Then was Five thousand seven hundred & ninety Four pounds of Tob^o charged to Mess^{rs} Tho^s Sligh Walter Tolley and John Paca Jun^r They being the surities of M^r Thomas Sheredine in relation To his due performance in his Sherriffs Office.

[Sept. 1, 1752.]

The vestry have agreed that no seats in the Addition shall be Appropriated but all held in common for This reason because their bargain with M^r Walter Tolley relating thereto has not been complied in By him therefore its agreed what was disbursed by said Tolley on Account of the said work Shall be refuned to him with Interest by the said Vestry.

John Giles Appeared According to his summons from the Vestry for marrying Hannah Scott sister to His late wife Deceased, and being Admonished to put her away has refused to do it therefore the Vestry hereby Orders the Clk. to make Presentment to the grand Jury against the said Giles & said Hannah Scott, as haveing Offended against the Act of Assembly in that case made and provided.

[March 6, 1753.]

A Dispute ariseing about the boundery between Saint Pauls and Saint Johns parrish, The Vestry have Taken the same into consideration and have Appointed Mess^r. Walter Tolley and Rich^d. Wilmott to meet Two parrishoners of Saint Thomas's Parrish to Enquire Into the said boundery and to report the state of the case on or before the first Tuesday in June Next to the said Vestry of Saint Johns, parrish.

[Aug., 1753.]

Then the vestry agreed with M^r. Roger Boyce to cause to be made Ten or Twelve Benches Ten Or twelve feet lenth One and a quarter Inch thick Fourteen or fifteen Inches broad of white Oak or popler, the said benches to be placed at Nicho^s. Hutchens and to be by him Kept From the weather for which the vestry have agreed to Allow the said Hutchens One hundred Pounds of Tob^o. for Every time Church is There Kept,

[May 2, 1758.]

The vestry having been informed that Joseph Crook Vestryman of this Parish Aiding Abeted in a Certain Riot committed in the Town of Joppa Easter Monday last & was In church Neither Easterday nor monday. Therefore the Vestry are of Opinion that the Said Jos. Crook Be no longer a member of the said Vestry and hereby Impower the Rector to Call upon him & give Notice hereof to the Parishioners to Chuse a New member In his Room,—*

[Oct. 2, 1759.]

Whereas, the Reverend M^r. Deans Complained to the Vestry that Peter Carroll and Rob^t. Price Tenants on the Glebeland have committed great wast on the said lands And have Also Subsett the said lands, And whereas, the said Carroll and Price & The Reverend M^r. Deans, have Left to the Vestry for Remediing the same And they having Viewed the said lands—Therefore are of Opion that All the former Leasses shall be Revoked and New ones, Granted in their Stead Upon the Terms of the former Leases, Subsetting and was Being Especially Barred.

It is also the Opinion of the Vestry That one Vestryman & the Two Wardens Shall Yearly Examine weather any further Wast or Subsetting shall Be Done on the Glebe lands.

[Sept. 2, 1766.]

Jn^o. Roberts had an Order from the vestry on Rob^t. Adair Esq^r. Sherr. for five Pounds One shilling and tenpence half penny Curr^{cy}. Being for

*Easter occurred this year on the 26th of March. In the absence of any other record of the "riot," it may not be amiss to suggest that it was probably the accompaniment of the Vestry election. At that time there were no "primaries," and consequently riotous spirits had to find vent in parish elections. As the voting was *viva voce*, it was easy to detect one's opponent.

some wood for the Parish use and his Acting as Clk of the vestry one Year Ending July the Fourth.

[Sept. 6, 1768.]

Ordered Jn^o Beale Howard Be paid what Cost he is at on Acct. of An Attachment Laid in his hands as a vestryman by Rich^d Johns, if not Recovered of said R^d Johns.

[Aug., 1779.]

Ordered that the Register procure from the Assessors of the several Hundreds in this Parish a List of the Parrishioners Names. That for the future the Vestry meet at the Vestry House to do Business.

[Feb., 1780.]

M^r Worsley Requests the Favour of the Vestry to Collect the last years Sallary due 1st March & to take such Methods as they think proper for this year.

M^r Rumsey Agreed to take his Hundred. M^r Cowan Agreed to Collect all near him, M^r Jn^o Beale Howard to Collect all he could. M^r T. G Howard D^o. M^r Tolley being disordered in his feet could not go about.

M^r Worsley proposes that the Gentlemen who are so kind to take this trouble will at the same time make Memorandums how & what each Subscriber will pay for this Year in Cash or produce

The Vestry Agreed with M^r Worsley to Continue Minister, who informed them he had let the Glebe for this Year.

N. B. The following Memorandum was made upon Paper in May last & lest it sho^d be lost is now transcribed into the Vestry Book

A Letter from S^t James's Parish was delivered by two Vestrymen of the s^d Parish, to B. Rumsey & J. B. Howard Esq, & afterwards shewn to the rest of the Vestry, who thinking it a Matter which concerned the whole Congregation, as much as themselves, desired M^r Worsley to read it in the Church & take the Sentiments of the whole Parish, that no Umbrage might be given; the Purport of which as appears by the Letter, was to request the Attendance of the Minister of this Parish one Sunday in the Month, at S^t James's Church. It was accordingly done, in a full Congregation & every Person present was unanimous in agreeing thereto; & no Vestry meeting, the Gentlemen of the Vestry were waited upon by M^r Worsley to know if they agreed with the Congregation & B. Rumsey, Esq, Col. A. Cowan, J. B. Howard Esq, T. G. Howard Esq, Major Ja^s Gittings & M^r John Day, severally declared their Assent thereto; M^r Worsley therefore proposed the following Regulations for Divine Service

Monthly

Quod Attestor Rogatus

The first Sunday — at Joppa

Geo H Worsley.

The second Sunday — at M^r Hunters in Joppa Parish

The third Sunday — at Joppa

The fourth Sunday — at St. James's Church

The fifth Sunday — at Joppa.

Joppa Dec^r 11. 1780

Rec^d of the Rev^d M^r G. H. Worsley Orders for Twenty One Bushels of Wheat being in full for my Sallery from March 1780 to March 1781
p^r me

Alexander Gray.

Mess^{rs}

10	A. Cowan
7	S. Birkhead
4	W. Mashers
<hr/>	
21	

[Dec. 24, 1781.]

Hannah Ingram the Sexton appeared and informed the Vestry M^r Philips protested the Order for seven Bushells of Wheat part of her Sallery due for the Year 1780 and also prayed Payment for the Year 1781.

[June 3, 1782.]

The Register is ordered to write to the Tennants on the Gleib to come and Settle their Accounts at the next meeting of the Vestry.

ALL SAINTS' PARISH, CALVERT COUNTY.

Ann^o 1704

Viz

July y^o 2^d This day y^o Vestry meett M^r Thomas Cockautt
Then y^o Vistry agreed with Tho. Seager M^r James Heigh
to be sexton for to take care & look after M^r W^m Darrumple
y^o Church & also to sweep itt & Open y^o M^r Joseph Hall
Church doors and Windows & to secure M^r Jn^o Smith att Cocktown
them againe & in y^o Winter time to make M^r Jn^o Smith att Hallerick
fire in y^o Vestry & also to cleare y^o Spring & doe all things fitting for
y^o Said place & in consideration thereof they agree to allow him one halfe
of y^o proffitts old W^m y^o Duchman y^o Other halfe & after y^o to have
y^o whole proffitts ariseing theirefrom

y^o Vestry Adj^d till y^o next
meeting

Jan^{ry} 5th 1710

Resolved that Those p^rsons that take up Pews & not freeholders, haue the pews no longer then they Continue in the parish, & When they

remoue, or dye, the pew to belong to the parish, to be disposed of by the Vestry.

Or^{dd} Y^t M^r Wadsworth pay to M^r W^m Smith Two hund^d pound of Tobacco, due from him to the parish for his part of the pew in the porch.

[Nov. 15, 1711.]

. ordred that Tho^s Seager burn the Leaues Round the Church and Church y^d and at all Times To ^{ff}forme his office of Sexton as formerly Takeing noe Notice of What Tho^s Hillry forewarneing him to Digg Graues.

[May 8, 1721.]

At a Vestrey met and held at All S^ts Parish Church Caluert County the Eight day of May One Thoussand Seven Hundred Twenty one, by the Vestrey men thereunto appointed and authorised being ^{pp}sent

M^r Thomas Cockshutt

M^r James Heighe

M^r John Smith

M^r Abraham Downe

Ordered that the Clerk of the Vestrey do Enter the Depositions of Charity Whittington, and Naomy Doreing in the Register of All Saints Parish and also to Register the birth of Leuine Bagby who was born in the year of our Lord 1677 as appears by an Old bible, now in the Clerks hands and presented to this Vestrey.

Ordered that Samuel ffowler Sen^r be allowed one Thousand pound of Tobacco for his being Sexton and Looking after the Church this Ensueing year.

The Vestrey Ajourns till the 15th of this Instant.

[Oct. 9, 1722.]

It is agreed on by the Vestry that M^r Thomas Lingan & partners haue their Choice of the pews in the New porch in Consideration that the pulpit be Removed into their Pew—N^o 27.

[Oct 30, 1722.]

Order'd that Samuel ffowler Sexton Wash and Clean the Church and Clear the Church Yard as soon as possible if he doth not Comply he is to be mulct of his wages.

Order'd that M^r Richard Smith Merch^t haue the fourth part of the Ministers pew he paying to the Vestry two hundred pounds of Tobacco for it.

[May 5, 1724.]

Order'd that Coll. John Smith and M^r Sab^t Sollers haue Liberty to haue a Small Narrow Window made with an Arch'd Top ouer Each of

their Pews provided that it doth not Damnify the Church and they to haue it done on their own Cost.

[Nov. 14, 1725.]

The Vestry orders Richard Stallinges Clk. of the Vestry to go to Court to desire the Court to Leuy three pounds of Tobacco 3^{s} poll on y^e Taxable persons of the parish to pay the parish Charges.

[Apr. 11, 1726.]

The Vestry agrees with Martin Wells Carpenter to mend the Upping Block on the South Side of the Church and to put in a good Locust piece at Each Porch door and the Vestry house Door to fend off the water and agrees to pay him two Hundred pounds of Tobacco.

[May 15, 1729.]

Then the Vestry Laid out the S^d Parish into nine precincts and Chose two persons in Each precinct to be Counters of Tobacco &c according to the Act of Assembly.

Ordered that R^d Stallinges Clk. of the Vestry giue to Each and Every of the Counters a Copy of the Order for their being Chosen by the Vestry and a Copy of their Precincts.

[July 4, 1734.]

Ordered that the Necessaries for the parish use that Cap^t Joseph Wilkinson was to Send to England for, that the Reverend M^r. James Williamson doth agree with the Vestry to Send for, and to Charge but Twenty five 3^{s} Cent Sterling on them from the first purchase of them and to haue Tobacco for the Same at a penny p^t pound Sterling Viz^t a purple Velvet Cushion a yard Long for the Pulpit with Gold fring, a Large Church Prayer Book, a new Surplice, for a man of midle Stature, a Spade, and a Decent free Stone font for the Church, Ordered that the Reverend M^r. James Williamson haue an order on M^r. Gabriel Parker late Sher^t for the Ballance that is in his hand due to All S^d Parish in part of pay for the above Necessaries.

The Vestry fines M^r. William Holland Vestry man and Mr. Roger Boyce Church Warden for their not attending at this Vestry the Sum of fifty pounds of Tob^o Each.

[Dec. 3, 1734.]

The Vestry Adjourns for one Hour, then to meet at the House of the Reverend M^r. James Williamson to View the Library &c.

Then the Vestry did View the Library and found all in order according to the Cattalogue except two Books which were wanting [Viz^t] the Practical Believer in 8Vo: and Doctor Hornecks Delight and Judgment.

[Nov. 30, 1736.]

This day M^r Richard Blake Vestryman Reported to this Vestry that himself and M^r James Heighe Church Warden forewarn'd George ——— and Mary ——— not to Cohabit together for the future upon their Penalty as the Law in that Case Provides.

[Nov. 2, 1742.]

Ord^d that R^d Stallinges Reg^r Set up Advertizement at y^e Church Door to acquaint y^e parishoners of S^d parish that they come forthwith to S^d Reg^r & haue all former & futur Births, Marriages and Burials put on the Parish Records or they will be prosecuted as the Law Directs.

[May 19, 1747.]

Order'd that R^d Stallinges Clk. of the Vestry go to M^r John Skinner & know if he will undertake the Tarring and find the tarr and workman to Tarr y^e Roof and weather boards of the Church and to know his Lowest price and when he Can haue it done.

[Apr. 11, 1748.]

Order'd that the Vestry Clk: draws orders on M^r Daniel Rawlings Sher. to pay unto Michall Askew Sexton 1000^{lb} Tob and to Richard Stallinges Vestry Clk 1000 D^o

Order'd that the Clk: Sett up Advertisements to give notice that the vestry will Dispose off 7000 and odd pounds of Tobacco in the Sher^r's hands for Cur^t money to the highest Bidder at All S^d Parish Church on the first tuesday in June next,

[Mar. 6, 1749.]

Order'd that the Absent Gent. of the Vestry appear at the next Vestry to Show Cause why they did not attend at this Vestry and that the Clk of the Vestry giue notice to them.

[Apr. 16, 1750.]

Then the Vestry Chose Mes^{rs} Sam^l Austin and Sam^l Robertson for Inspectors in the Room of M^r W^m Miller Jun^r Deceased to be transmitted to his Excellency with all Convenient Speed.

M^r W^m Hickman Discharg'd from being a Vestryman on acc^t of being an Inspector.

[Nov. 5, 1751.]

Orderd That y^e Clerk Give Notice to M^r John Skinner Sherriff to Give an Acco^t of y^e Insolvences by Name, and also the Dividend of the Vestry's part of Tobacco.

ADDENDA.

[1]

Sir:

I should be much obliged to you if you would please to call at M. Andrews before you leave Town this afternoon as a young man & young [woman] are there waiting for you in great Need of your Assistance

I am Sir

Sunday

Your most Ob^t

April 28, 65

* * * *

[2]

Rev^d Sir/

Your & Mistr^s Deans Company is Desired at the funeral of Doctor Josias Midlemore next thursday being the 20th Instant. It is to hold at S^t Georges Church.

If you will be So good as to give notice to Your Congregation that those who are Inclined to Come may know the day & that there will be a Sermon will very much oblige Your's

by order from Mis^{rs}And^{rw} Lendrum

Midlemore

Saturday 16th 1755.

[3]

To the Gentlemen of the Vestrey of All S^ts Parish.

This is to Certifie you That I Assign ouer all my Right and Title of my part of the pew N^o 6, which is in partnership with William Wood, unto Thomas Haruey of S^ts Parish and his Heirs for Euer, and pray that the same may be Recorded in the Records of All S^ts Parish, I hauing receiued full Satisfaction for the Same as Witness my hand this 9th day of May 1720

Testes

Robert Sumnar.

Rich. Stallinges.

[4]

This Indenture made this Eleventh day of October In the Year of Our Lord One thousand Seven hundred and Sixty four Between John Clagett of Frederick County and Province of Maryland of the one part Gentleman And The Reverend M^r. Alexander Williamson Rector of Prince Georges Parish in the County and Province aforesaid of the other part Witnesseth That the said John Clagett being sensible, how much necessity there is for having a Publick Schooll in the Parish aforesaid, for the

Instruction of Youth ; and one Corner of his Land having been deemed Convenient for Erecting the said house upon : He therefore out of Sentiments of Tenderness and Regard for the rising Generation, Hath, given granted aliened Infeoffed and confirmed and by these presents doth freely and clearly give grant alien Infeoff and confirm unto the said M^r. Alexander Williamson and his Successors for the use of a Publick School for ever All that part of a Tract of Land being part of a Tract of Land called Clagetts purchase lying in the Parish and County aforesaid Signed Sealed and Delivered

John Clagett.

in the Presence of

Cha^s. Jones

Andrew Heigh.

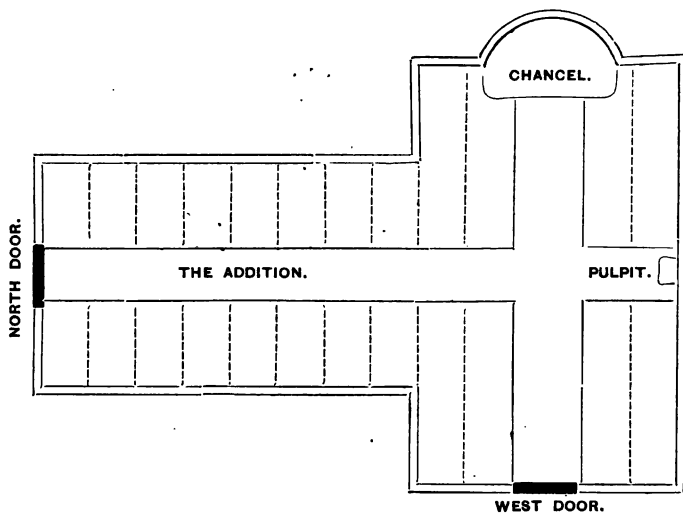
[5]

Maryland ss.

In the name of God Amen I Bevill Granville Rector of the parish of William & Mary in charles County in the province aforesaid do by these presents resign and give up to the Right Honorable the Lord Proprietary all my right title & interest in the said living of William & Mary in the County aforesaid & to all perquisites benefits & advantages thereto belonging. Witness my hand this 25 day of January 1782

Witness.

Bevill Granville



GROUND PLAN
OF THE
OLD PARISH CHURCH
OF
ST. PAUL'S, KENT ISLAND.

From the Rev. Dr. Allen's Manuscript History.

VII

OLD MARYLAND MANORS

• "Keep leets and law-days and in sessions sit."—*Othello*.

"You would present her at the leet because she brought stone jugs and no sealed quarts."—*Taming of the Shrew*.

"I know my remedy; I must go fetch the third borough" [Tithingman].—*Taming of the Shrew*.

"A Tything-man in each Manor, a Constable in each Hundred."—*Bacon, Laws of Maryland*, 1638.

"Proces in Court Baron est Summons, Attachement & Distres, que est proces al commō Ley."—*Le Court Leete et Court Baron*, John Kitchin. London, 1623.

"And By-laws for the common weale may be made in a Leet."—*Antiquity, Authority, and Uses of Leets*, Robert Powell. London, 1641.

"We also, by these Presents do give and grant licence to the same Baron of Baltimore and to his heirs, to erect any parcels of land within the Province aforesaid into manors, and in every of those manors to have and hold a Court Baron . . . and view of Frank-Pledge, for the conservation of the peace and better government of those parts."—*Charter of Maryland, Art. 19*.

"And We do . . . authorize you that every two thousand acres . . . so to be passed . . . be erected and created into a mannor. . . . And we do hereby further authorize you that you cause to be granted unto every of the said Adventurers within every of their said manors respectively, . . . a Court Barron and Court Leet, to be from time to time held. . . ."—*Instructions from Lord Baltimore to Governor Calvert*, 1636.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

VII

OLD MARYLAND MANORS

With the Records of a Court Leet and a Court Baron .

By JOHN JOHNSON, A. B.

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OLD MARYLAND MANORS.

A striking contrast between the North and the South is presented by the small landholdings of the former and the great estates of the latter. Tracts of thousands of acres were not at all uncommon in colonial Maryland, and sometimes land-grants included even tens of thousands. These great estates had a strong shaping influence on the life of early Maryland. Separating their owners by wide intervals, they prevented that association of interests and feelings that was strong in the towns of the northern colonies. The man who lived in the center of a tract of ten thousand acres must necessarily have been thrown largely upon his own resources for amusement and for culture. The coöperation which makes schools and libraries of easy attainment in a thickly settled community was absent among such people. Consequently education could be obtained only at great cost and inconvenience. The planter who was determined to have his children well taught had to send them abroad, as was done in the case of Charles Carroll of Carrollton.

There were some towns founded in Maryland, it is true, in the earliest days. The vanished city of St. Mary's, the lost Joppa, and others that have disappeared as completely as the "cities of the plain," furnished a stimulus to civilization in some parts of the colony. But in spite of these instances, it is true that most of the life of Maryland in the latter half of the seventeenth and the whole of the eighteenth century, was country life. And it was a country life that presented many analogies to the country life of Englishmen during the same period.

The first generation of Maryland planters led that sort of hand-to-mouth, happy-go-lucky existence that marked the beginning of all the colonies. Until means became adapted to ends, but little comfort and still less culture, were to be found. Many of the earliest settlers of high consideration made their cross-mark on titles, deeds and conveyances. Their ignorance, however, was the knowledge of the class from which the best born of them sprang—the English country gentry of the seventeenth century.

The share of Maryland planters in the conveniences of life does not appear to have been large at first, though even then they made an attempt at good living. In the inventory accompanying the will of Governor Leonard Calvert, the item of a silver sack-cup follows that of two pairs of socks. Sack probably occupied far more personal attention than did wearing apparel. Indeed, one of our historians ventures the statement that this potent liquor is oftener mentioned in the records of Maryland than in the pages of Shakespeare. Beds in the early days were lamentably lacking. Travellers either deprived the host of his, or slept upon deer skins or fodder piled upon the floor. All the appointments of a household were necessarily meagre.

But after this early period had passed and Marylanders had learned for good and all of what their soil and their climate were capable, a settled order of things began, which continued into the present century. The life of the Maryland planter of this second period was such as left few traces in the written accounts that have come down to us. In the few letters and journals of the colonial epoch—few, because so rarely the colonists had the knowledge, and more rarely still the taste to write either letters or journals—in these few are to be found historical suggestions. Of the famous estates of the colonial era, a small number are still in the hands of the descendants of colonial families. An idea of the former condition of things can be obtained by visiting these localities. There are still found the ancient houses, the chapels, the out-buildings, that have

remained from colonial times. There, more clearly than elsewhere, we may see the vestiges of the old aristocratic spirit which has almost disappeared under the democratic attrition of more than a century. These traces will not last much longer, and if any record of this old system is to be kept, it should be made at once.

The Calverts desired to found in Maryland a new landed aristocracy. Though the "Bill for Baronies" never passed the Assembly, the Proprietor was able to establish manors, and to give to the manorial lords rights of jurisdiction over their tenants. The lord of the manor thus became a person of prime importance. While his wealth as a large landholder gave him one element of consideration, his judicial dignity gave him another.

The reason the settlers consented to the introduction of this system is not hard to find. Our Maryland ancestors, following the example of certain great proprietors, proposed to live in scattered, rural ways, on large estates. The manorial system, which had been used for a like purpose in the old country, lay ready to their hands and they adopted it. Similarly, the men of New England, proposing to live in close communities, adopted the township system. Once taken up, the manorial system became general, so that English manors, English halls, English lords of the manor were scattered all over our State.

In accordance with his charter right,* the Proprietary, in 1636, issued instructions that every two thousand acres given to any adventurer should be erected into a manor, with "a Court Barron and a Court Leet, to be from time to time held within every such mannor respectively."† These instructions were repeated many times, and the records are filled with such grants. Capt. George Evelin, Lord of the Manor of Evelinton, in St. Mary's county; Marmaduke Tilden, Lord

* See Charter of Maryland, Art. 19.

† Kilty, p. 31. *Conditions of Plantation*, 1636.

of Great Oak Manor, and Major James Ringgold, Lord of the Manor on Eastern Neck, both in Kent; Giles Brent, Lord of Kent Fort, on Kent Island; George Talbot, of Susquehanna Manor, in Cecil county; these are a few names picked at random. In the Library of the Maryland Historical Society is to be found a conveyance dated 1734 for a parcel of land to be held "as of the Manor of Nanticoke." In the same collection are preserved the rent-roll of Queen Anne's Manor, and a statement of the sale, in 1767, of twenty-seven manors, embracing one hundred thousand acres. In 1776, there were still unsold seventy thousand acres of proprietary manors lying in nine counties.* In the Maryland Reports † is to be found a notable law suit over Anne Arundel Manor. The Proprietor, Lord Frederick Calvert, sought by means of a common recovery to break the entail upon the manor, and thus prevent its passing into the hands of a natural son of the former Proprietor.

At the present day we find many estates called manors. Those that have attracted most notice are My Lady's Manor and Bohemia Manor. At the beautiful and historic seat of the Hon. John Lee Carroll, Doughoregan Manor, the name, the mansion, the chapel, the grounds, all still show surviving evidences of the original state of affairs. But it is with the social side of this system that we are here concerned. Its civic aspect will be treated in a subsequent part of this paper. It is, however, rather the patriarchal than the feudal type of society that is presented at the period we have materials for describing. It is not easy to picture the combined elegance and simplicity of those old homesteads—the appearance they presented of aristocratic state mingled with republican good-fellowship. The entrance to the place was, perhaps, through a wood of old oaks and chestnuts, that had passed their sapling growth a century before George Calvert, first Baron of Balti-

* Scharf II., p. 104.

† 2 Harris & McHenry, p. 279.

more, appeared as a stripling in the English Court. Emerging from the wood, the road was lined with a double colonnade of locusts or beeches with footpaths between. Nearing the mansion, pines and firs replaced the deciduous trees, and the evergreen branches formed a symbol of the ever fresh hospitality awaiting the approaching guest.

Before the door stood the old elms, planted by the founder of the family, and the lawn was terraced in the English style. The turf—a peculiar pride of the master of the house—was so thick and close that it would be hard to find a finger's breadth of earth without its blade of grass. Conifers stood at intervals over the half dozen acres forming the lawn, and at either end of a terrace a catalpa with a trunk of Californian proportions shaded a rustic seat.

The house itself was in most cases a long, low structure of brick. The finest residences were remarkable for their large size and striking appearance.* The rooms of the old houses were grouped about a large hall-way in which some of the family usually sat. The walls everywhere were wainscotted to the ceiling. Sometimes the woodwork was finely carved and of rare material. Upon the walls hung the portraits of the ancestors of the family, often as far back as six or seven generations. A side-board in the dining-room displayed a portion of the plate, bearing the family crest. Flanking the plate stood a great array of glasses and decanters. For in the early days the proper discharge of the sacred duty of hospitality involved various strong potations. Even now the visitor to the Maryland country house is almost always invited to take something to drink on entering or leaving the dwelling.

Various offices stood around the mansion. Notable among them was the stone smoke-house. The quarters of mast-fed hogs hung from the roof, and the fires in the pit below were tended by superannuated negroes, their faces greasy with lard and begrimed with soot beyond their natural blackness.

* Eddis's Letters.

In some places the family chapel stood close by the house. On one side of the main aisle sat the slaves, on the other the free white tenants ; and no considerations of comfort could induce the freemen to cross the interval that served as a boundary between them and the despised race. Beneath the brick floor of the chapel and marked by a marble slab, were the graves of dead members of the family of the lord of the manor. Any one attaining special distinction was buried by the side of the chancel and, within the chancel rails, let into the wall was a tablet to his memory. If the family belonged to the ancient church, frescoes and oil paintings, occasionally copies of considerable beauty, adorned the place.

The mode of burial curiously illustrated the prevalent feeling of class distinction, and at the same time preserved an ancient custom of the mother country. While the lord's family lay buried beneath the floor in the chapel, the tenants' graves were at a distance hidden among the trees. At some of these graves stood a neat slab of stone with a pious inscription. Still farther removed, with only a board as a memorial of each, were the graves of the slaves. Not even death could unite what God had put asunder.

At a considerable distance from the great house was the dwelling of the overseer. Around him in numbers sufficient to people a small town, lived the negroes whose labor produced the wheat and tobacco upon which the fabric of society rested. Out of the number of these dependents a few of the likeliest went to the mansion as domestic servants.

Scattered at intervals over the estate, wherever their farms lay, were the houses of the free white tenants. The tenant farms were frequently several hundred acres in extent, and were held on leases of twenty-one years. The rent was low and was usually paid in kind, not in money. The system had some of the evils incident to English land tenure of the present day, and has now given way to short leases, or has disappeared entirely by the breaking up of the estates on which it was practised.

In various ways on these estates the traditional sports of the mother country were kept up. One of the patriarchs of colonial Maryland, when importuned by his relatives to break the entail upon his estate, replied: "If one of you inherit the whole, I shall be responsible for the production of one fox-hunter. If I divide it, I shall make as many fox-hunters as I make heirs." Fox-hunting was a pursuit in which Marylanders delighted. In no characteristic is the Englishry of the settlers (to use Mr. Freeman's term) more clearly shown than in this. On horses that seemed almost tireless, and with dogs like the horses, they sometimes chased Reynard across the eastern peninsula, from the Chesapeake to the Atlantic. The return journey and the stops at hospitable mansions on the way took more time than the pursuit of the fox, and the whole expedition sometimes lasted a week.

Aside from the social aspect of these old estates, they are also worthy of notice from a civic point of view. The history of Maryland owes its interest not so much to striking events as to the continuity of old English institutions and ancient habits of local self-government. When the early colonists came to Maryland they invented no administrative or judicial methods. The old institutions of England were transplanted to Maryland and acclimatized. In the new soil they were modified and destroyed, or they were modified and perpetuated. But in either case there is perfect continuity between the institutions of colonial Maryland and those of the older country. For our new institutions, like new species, were not created; they grew from the old. Lord Baltimore modeled his colony after the Palatinate of Durham, and the details of local administration were what they had been at home. Old methods were adapted to new conditions.

The manor was the land on which the lord and his tenants lived, and bound up with the land were also the rights of government which the lord possessed over the tenants, and they over one another. For the ownership of the manorial estate carried with it the right to hold two courts, in which dis-

putes could be decided and tenant titles established and recorded; and in which, also, residents on the estate exercised a limited legislative power. These manorial jurisdictions have descended from a time previous to the accession of Edward the Confessor, and their reproduction and continuance in Maryland form a striking instance of the permanence of ancient English customs.

A tradition has come down in Maryland that these courts were held occasionally by members of the Proprietary family owning manors.* In a court baron, held on St. Gabriel's Manor, in 1649, the steward gave a tenant seizin by the rod, each party, according to ancient custom, retaining as evidence of the transfer a part of a twig broken in the ceremony.† In the library of the Maryland Historical Society are preserved the records of a court baron and a court leet of St. Clement's Manor, in St. Mary's county, held at intervals between 1659 and 1672.‡ We can hardly believe that these records are the only ones of their kind that were kept in the Province. For a single one that has been preserved there must have been many lost. When we consider that so many documents belonging to the government of the colony, and for whose preservation great precautions were once taken, have nevertheless been destroyed, it will appear but natural that papers left entirely in private hands, and of but little value or interest to their possessors should have entirely disappeared. Moreover, as will presently be shown in detail, the profits of the manorial courts were not inconsiderable. Consequently, they would not soon be relinquished. Nor is it likely, where every owner of two thousand acres could obtain these rights of jurisdiction, that only two persons in the whole Province

* Kilty, p. 93.

† Bozman, vol. 2, note, p. 372. The same old English custom obtained in early New England.

‡ See Appendix for a copy of these records, furnished by the kindness of the Librarian of the Maryland Historical Society, J. W. M. Lee.

would exercise them. It seems probable that in the early period of the existence of the colony manorial courts were not uncommon.

The popular court of the manor was the court leet or court of the people. When the grant of the leet included the view of frankpledge, as in the Maryland manors, that ceremony took place at the leet, though in the records no mention of the view is made. At the opening of the leet, the steward, who was the judge, having taken his place, the bailiff made proclamation with three "Oyez," and commanded all to draw near and answer to their names upon "pain and peril." Then followed the empanelling of a jury from the assembled residents on the manor, all of whom between the ages of twelve years and sixty were required to be present. The duties of a leet jury seem to have been those of both grand and petty juries. All felonies and lesser offenses were enquirable. The statute, 18 Edw. II., names the following persons as proper to be investigated at a leet:

"Such as have double measure and buy by the great and sell by the less. . . . Such as haunt taverns and no man knoweth whereon they do live. . . . Such as sleep by day and watch by night, and fare well and have nothing,—" a set that need watching. The leet had also a general supervision of trade, fixed the price of bread and ale, * and set its hands on butchers that sold "corrupt victual." The game laws also were enforced by the leet. At the leet held at St. Clement's, in St. Mary's county, Robert Cooper was fined for fowling without license on St. Clement's Island. The notion that hunting was for the rich alone showed itself in another way. Of the chase or park of the English manors, some traces may be found in Maryland. A writer in "A Description of the Province of New Albion," which adjoined Maryland on the east, speaks of "storing his Parks with Elks and fallow Deer," probably following a Maryland example. On the Bohemia

* See Appendix for instances.

Manor, the remains of the walls of a deer park were pointed out as late as 1859.* That any necessity existed for a park is not to be believed. Venison was so common a food that Hammond, in *Leah and Rachel*, says "that venison is accounted a tiresome meat." An aping of aristocratic manners may, perhaps, have induced some of the settlers to enclose a wood for a park, but nothing else could have done so.

Another important function of the court leet, was the levying of a deodand or fine upon the cause of any accident to life or limb. A reckless driver running over a child or a careless woodman felling a tree and killing a passer-by, was mulcted by the jury of the leet. Before the period of Maryland manors, the cart or the tree causing the injury became the property of the lord, the idea being that he would expend its value in masses for the soul of the deceased. In this is probably to be found the origin of the name given to the payment, deodand.† In actual fact, however, the soul of the departed was not of sufficient importance in the eyes of most lords to compel the loss of a piece of property so easily acquired as the forfeited article.

The leet could enact by-laws regulating the intercourse of residents with each other, and the regulations had all the force of a town ordinance. In the leet also constables, ale-tasters, affeerors and bailiffs were elected; and interference with the exercise of their duties, as breaking into the pound, taking away impounded cattle, or resisting distraint for rent was punishable by the leet.‡ The fines imposed went to the lord

* Scharf, vol. 1, p. 430.

† See interesting remarks on this topic in lectures on the Common Law by Oliver Wendell Holmes, Jr.

‡ Manorial courts are still held in some parts of Great Britain. In *Notes and Queries*, October 21, 1882, it is stated that on October 3, 1882, a court leet for the manors of Williton Regis, Williton Hadley and West Fulford was held. Appointments of inspectors of weights and measures, of bailiff, and of hayward were made. The leet for the town of Watchit was held also, and appointed a port-reeve, ale-tasters, a crier, a stock driver and an inspector. Leets were also held the same month on the estates of the Duke of Buccleugh. (N. & Q., November 4, 1882.)

and were often profitable. Besides fines, other punishments were used. In 1670 the jury of St. Clement's leet ordered the erection of "a pair of Stocks, pillory and Ducking Stool." *

The presence of irresponsible strangers seems to have been peculiarly distasteful to our ancestors. By a law of Edward the Confessor, a man was forbidden to entertain a stranger above two nights unless he would hold his guest to right. So the constable on the manor anciently took security of all heads of families for the keeping of the peace by strangers in their houses. Curiously enough, the leet at St. Clement's presented John Mansell for "entertayning Benjamin Hamon & Cybil, his wife, Inmates," and ordered him "to remove his inmates or give security;" a proceeding that would have been in perfect keeping a thousand years ago.

The Maryland county justices were required to appoint constables in every hundred, who swore on taking office to "levy hue and cry and cause" refractory criminals to be taken.† The hue and cry carries us back to remote Anglo-Saxon times, when all the population went to hunt the thief. The duties of the manorial constable were doubtless the same in the manor as those of the constables of the hundred in their districts.

The affeerors, mentioned above, were sworn officers chosen from the residents. Their duty was to revise the fines imposed by the leet jury, and to temper justice with mercy. They are mentioned several times in the records of St. Clement's, in one case reducing to two hundred pounds an amercement of two thousand pounds of tobacco imposed on a certain Gardiner, who had taken wild hogs belonging to the lord.‡

The Maryland Indians were very early reduced to a dependent condition, and it became the duty of the leet to include

* See Appendix.

† Parks, *Laws of Maryland* 1708, p. 99.

‡ See Appendix.

them in its police jurisdiction.* There is an account in the St. Clement records of the fining of two Indian boys for some thievish pranks. Moreover, "the King of Chaptico" himself is presented for stealing a sow and her pigs and having "raised a stock of them." This was apparently too weighty a matter for the simple jury of the tenants, so it was referred to "ye hon^{ble}, ye Gov^r." The matter of losing hogs seems to have been a great grievance for the tenants, and the jury accordingly reported that they "conceive that Indians ought not to keepe hoggs, for under pretence of them they may destroy all ye hoggs belonging to the man^r, and therefore they ought to be warned now to destroy them, else to be fyned att the next court." The conquered Britons were treated in a spirit almost as liberal.

The elasticity of an old institution like the leet in being thus adapted to the government of savages is worthy of note. It is a striking illustration, also, of the principle that impels men to adapt old forms to new conditions, and it deserves to be placed by the side of the institution of tithing men among the Indians of Plymouth.† Doubtless other methods of police and government for the Indians were adopted in various places by the colonists, and curious survivals of old forms like the above might be noted by the investigator.

In the court baron of the freeholders the freehold tenants acted as both jury and judges. A freeholder could be tried only before his peers. So that if the freeholders fell below two in number the court could no longer be held. Before this court were brought points in dispute between the lord and his tenants as to rents, forfeitures, escheats, trespass and the like. Besides these matters, actions of debt between tenants and transfers of land took place in the court baron. Here, also, the tenant did fealty for his land, swearing, ‡

* See Appendix.

† "Studies," IV. Saxon Tithingmen in America, p. 10.

‡ Gurdon, p. 615. See Appendix for instances of swearing fealty.

"Hear you, my lord, that I, A. B., shall be to you both true and faithful, and shall owe my Fidelity to you for the Land I hold of you, and lawfully shall do and perform such Customs and Services as my Duty is to you, at the terms assigned, so help me God and all his saints." *

* The origin of manorial courts is very obscure and goes back to an early period. Among the Anglo-Saxons, as early, perhaps, as the eighth century, conquest, purchase, grant and commendation had given rise to great estates. By this means all the arable land in some neighborhoods became the property of a wealthy lord. Consequently, the hitherto independent village community of owners of arable land became a dependent community of tenants. At the same time hunting, fishing, pasture, wood cutting, all the rights to the use of common wild land, rights that had formerly run with the ownership of a share of arable land, became rights of the lord, to be exercised and enjoyed by the tenant only by the sufferance of the lord. Thus, it appears, originated the title of the lord to the waste and to the game inhabiting it.

Contemporaneously with these agrarian changes went on as great a judicial change. Among the Anglo-Saxons jurisdiction belonged to the state, not to the king. But jurisdiction and the profits of jurisdiction were separate. While justice was a public trust, the profits of justice were merely a source of royal revenue. So it came about, as early as the ninth century, that the fines of the hundred courts, fines for which every offence might be commuted, were often granted by the king to any neighboring magnate. This grant of profits was very different from a grant of jurisdiction. The date at which private jurisdiction originated is unknown. The earliest grants of it date from the reign of Edward the Confessor, but private courts existed before his time. Though he and his Norman advisers were the first to regard jurisdiction as royal property, to be granted away, a revolution had already taken place in the customs of the people, who had abandoned the ancient judicial system, for the loose administration of the popular courts no longer satisfied the needs of an advancing civilization.

So clumsy and slow was the machinery of the hundred court that suits were almost always compromised. A favorite method of settlement was arbitration. The most natural arbitrator between tenants was the lord, and only a contract between the parties was needed to give him the powers of the hundred court. While the lord's decision was binding in law only as the result of a contract, yet his private authority among his tenants was great enough to enforce the settlement. Here, then, seems to be an origin, and a Saxon origin, for the jurisdiction of a manorial lord.

Some of the feudal incidents of the manorial tenure may be found mentioned in the records of the Maryland Land Office. Here is an example quoted in the *Land-holder's Assistant*: *
 "Whereas certain lands and tenements holding of the manors hereunder named have ceased for these three years last past to pay the rent due. . . . These are therefore to summon the said several tenants to pay the said rent and arrears and charges of this process unto the lord of the manor or else to be at the court to show cause why the said land should not

So much for the origin of private jurisdiction in general. An explanation of the specific origin of the three courts, the leet, the common law court baron and the customary court baron, brings us to a controversy. Professor Stubbs, on the authority of Ordericus, derives the courts of the manor from the tun-gemot. (Hist. I., p. 399.) Henry Adams denies the existence of the tun-gemot (Essays in A. S. Law, p. 22), and derives both the court baron and the court leet from the hundred court. As to the customary court he is silent. Professor W. F. Allen has still a third view, the court baron, according to him, being of feudal origin, and not being found earlier than the end of the eleventh century. He makes the non-existent tun-gemot of Professor Adams the germ of the customary court. All these views are so ably supported that it would be highly desirable to reconcile them, though it is probably impossible.

Adams appears to have proved that all manorial jurisdiction was originally obtained by the lords' assuming the powers of the hundred court. This may have been done by prescription, the tenants agreeing, or perhaps by actual royal grant of jurisdiction following on grants of profits.

But Allen's conclusions have a direct bearing here. He maintains, with great force, that the freeholders, the suitors and judges of the court baron, took their rise in the feudal period. No freeholders, in our sense, are to be found, he says, earlier than the end of the twelfth century. He thinks that in the interval between Domesday and this period, certain of the members of the class of villeins were advanced to the dignity of freeholders, while all the other original holders lost their earlier rights and fell into copyhold tenure. The court baron was established on a French model for the use of these promoted tenants. The Saxon manorial court, which Allen derives from the court of the township, and Adams from the hundred court, became the customary court of the copyholders. As they had fallen in status, so did it, and all important business of the estate was transacted in the court baron or the court leet. (See Allen's *Origin of Freeholders* in Proceedings of the Wisconsin Academy.)

* Kilty, p. 108.

escheat to the Lord of the Manor. . . . In the Manor of St. Michaels: One tenement of 100 acres . . . : yearly rent 2 barrels of corn and 2 capons—arrear, 3 years. . . .” In the manors of St. Gabriel and Trinity like claims were made. These are apparently the only instances on record of claims to escheats by manor lords. “At a court held at St. Mairies, 7th December, 1648, came Mrs. Margaret Brent and required the opinion of the court concerning . . . the tenements appertaining to the rebels within his Manors, whether or no their forfeitures belonged to the Lord of the Manors. The resolution of the court was that the said forfeitures did of right belong to the Lord of the Manors by virtue of his Lordship’s Conditions of Plantation. . . .” * While this interests us as the record of a feudal forfeiture in Maryland, it has an added attraction, due to the fact that this is probably the first mention of a female attorney. Another fact showing how the manorial tenure entered into the life of the people, is a decision of the Maryland Court of Appeals, made as late as 1835. In this case † it was held that a tenant on a manor was entitled on giving up his lease to the benefit of those manorial customs that were commonly recognized as good by the tenants, and that had been observed by the tenants during an indefinite time.

The manorial grants were originally used to promote emigration to the colony. To this purpose was soon added another, namely, that of military defence. It seems to have been the desire of the Proprietor to introduce a body of cultivators that could at any time be turned into militia. Accordingly, in 1641, he issued the following “Conditions of Plantation:” “Whatsoever person . . . shall be at the charge to transport into the Province . . . any number of able men . . . provided and furnished with arms and ammunition according to a particular hereunder exprest . . . , shall be

* Quoted by Kilty, p. 104.

† Dorsey vs. Eagle, 7 Gill and Johnson, 321.

granted unto every such adventurer for every twenty persons he shall so transport two thousand acres which said land shall be erected into a Mannor with all such Royalties and Privileges as are usually belonging to Mannors in England. . . .

"A particular of such arms and ammunition for every man which shall be transported thither.

"*Imprimis*—One Musket or Bastard-Musket with a snap-hance Lock.

"*Item*—Ten pound of Powder.

"*Item*—Fourty pound of lead—Bulletts, Pistoll and Goose Shot, each sort some.

"*Item*—One Sword and Belt.

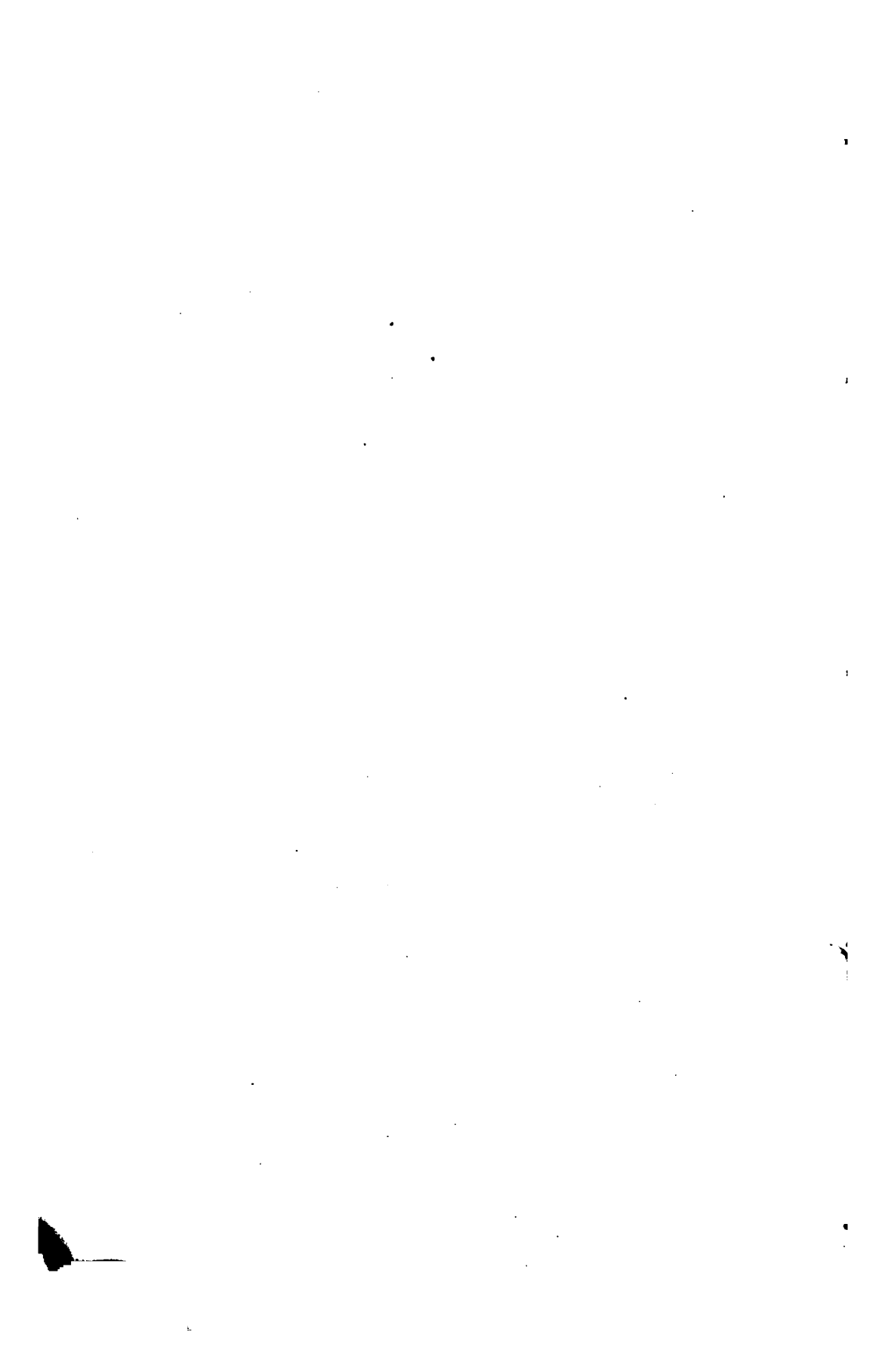
"*Item*—One Bandelier and Flask."

Such legislation bears an analogy to the Assize of Arms, under Henry I., and to parts of the Statute of Winchester, under Edward I. The idea of military defence by the mass of the people is common to these instances of English legislation of the middle ages, and to this regulation of the Maryland Proprietary of the seventeenth century.

In addition to these grants to private persons, manors were given to the Church. Newtown Manor, formerly an estate of the Proprietary, is to this day in the hands of the Jesuits. In Charles and St. Mary's counties, large estates, still bearing the title of manors, are at present owned by that society. All efforts have been unavailing to obtain access to any documents relating to these lands. If search were permitted in the archives of the order, much interesting material might be discovered.

It should not be thought that the aristocratic character of the manor was injurious to the growth of liberal ideas. The manor was a self-governing community. The manor officers were elected by the tenants, and juries were drawn from among the same body. By-laws for their own government were adopted by most voices. So there was ample scope for individuality to show itself. The extinction of the manorial

system was probably not due to any democratic feeling of opposition to it as a relic of feudalism, but to another cause. The early introduction of slavery must soon have made it more profitable for the lord to cultivate all his estate than to rent it to tenants, unless the estate were of immense size. The very large estates, however, were quickly sub-divided when population increased. Consequently, the relations which made a manor possible soon ceased to exist. At the same time the necessity for a system of private jurisdiction passed away. The manorial courts were adapted to a state of society in which law-abiding men lived far apart, and surrounded by unquiet neighbors; a society in which bloodshed was frequent and property insecure. In such circumstances it was needful to have in each community a person uniting in himself the influence of wealth and the majesty of law. When higher civilization made violence rare, and when better means of communication made it easy to reach the public courts, private authority was no longer needed. The feudal society of the manor reverted to the patriarchal society of the plantation. Serfs or slaves now replaced the free tenants of former times. The rights of these *villeins en gros* were entirely at the will of the owner of the estate. Controversies between them never reached the dignity of legal adjudication. Between them and their owners controversy was in the nature of things impossible. Here there was no scope for manorial courts. Controversies between master and master went, as before, to a public tribunal. The court baron and the court leet, having served their turn, were cast aside. If they played no great part in the history of the State, they are interesting as an extinct species, an institutional fossil, connecting the life of the present with the life of the past.



EDITORIAL NOTES.

The historical significance of the St. Clement records is that they prove incontestably the existence of a Court Leet in Maryland. These Records are the first of their kind that have been utilized by students of Maryland History. McMahon does not appear to have noticed any such Records. Bozman, in his History of Maryland, vol. ii, 89, says, "although the power and right of holding courts-baron and courts-leet might have been inserted in some or all of those grants of manors, yet we are told from *good authority*, that no memorial appears on the records of the province, of any practical use of either of those kinds of courts." Scharf, i, 123, quotes this passage as final.* The "good authority" upon whom Bozman relied was Kilty, who, in his Land-Holder's Assistant, 93, says, "no memorial appears on record" of the practical use of the privileges of Court Baron and Court Leet in those "inferior Manors" erected by the Conditions of Plantation, issued in 1636. But Kilty, as quoted by Bozman in the above passage, was not speaking of all manors, but only of those which assumed the name. Upon the very same page, 93, Kilty states that in some manors, namely, in those erected by special order of the Proprietary, "and more especially in those held by the Proprietary in his own name, it is understood that the privileges attached to them were actually exercised." But even Kilty mentions no concrete examples or existing records, of a Court Baron and a Court Leet.

Bozman, however, after having unfortunately quoted Kilty in such a partial way as to lead to the now current notion that there never was any case of Court Leet in Maryland, appears to have come upon certain indications of the existence of such an institution. He says in a foot note to page 89, "But I find in the Council Proceedings from 1636 to 1657, p. 23, a commission there recorded, for holding a court-leet in the isle of Kent directed 'to Robert Philpot, William Cox, Thomas Allen, of the isle of Kent, gentlemen, to be justices of the peace within the said island, to hold a court-leet in all civil actions not exceeding 1200 lbs. tobacco; and to hear and determine all offences criminal, within the said island, which may be determined by any justice of the peace in England, not extending to the loss of life or member. Given at St. Mary's, February 9th, 1637. Witness, Leonard Calvert.' As proceedings," continues Bozman, "most probably took place under this commission, there must, of consequence, have been some written memorials of those proceedings

*The existence of manorial courts in Maryland is, however, recognized by Scharf in a later volume, ii, 50.

once existing, though probably now lost. As the business of Courts-leet in England has long ago been gradually absorbed by the courts of quarter sessions for the shire or county, so with us, it is probable, that if any courts-leet or courts-baron were ever held in the province, the county-courts, at a very early period, swallowed up their jurisdictions. To trace these transfers of judicial power, would at this day be unnecessary, if it were a possible task, except it be to throw some light on the history of those times."

If a Court Leet was actually instituted upon Kent Island, then it was probably one of the oldest authorized local courts in Maryland, for the first county court in this province was not opened until about the middle of February, 1638, judicial power having been hitherto retained by the governor and his council and the General Assembly of Freemen, or the Colonial Parliament. Authority, however, to hold a local court in Kent Island had been granted to Captain George Evelyn on the 30th of December, 1637. He was authorized "to elect and choose six of the inhabitants of Kent for his council,"—a local court of *seven men*. Bozman states in his *Notes and Illustrations*, 580, that the Court Leet, that was authorized the following year but soon superceded by the "Commander" [High Constable, cf. Bozman, ii, 138] of Kent, was more like a county court than a manorial court. "The court held under the commission before stated [Bozman, ii, 39] 'to certain justices of the peace on the isle of Kent to hold a court leet' there, seems to have partaken more of the nature of what was subsequently called a county court, than a court pertaining to a manor; and 'the manor of Kent fort,' the only manor ever erected on the isle of Kent, was not then granted." The conclusion, then, is by Bozman, as regards the Kent Island case, that it was no Court Leet at all, in the technical sense of the term.

But Bozman thereupon, in his *Notes and Illustrations*, ii. 581, begins to approach the real truth touching the actual existence of manorial courts, a truth which Mr. John Johnson has only elucidated in its fulness in the foregoing monograph. "However, it does appear," says Mr. Bozman, "that at subsequent periods of time, one or two rare instances occurred of the holding both courts baron and courts leet in two distinct manors. 'A court baron was held at the manor of St. Gabriel, on the 7th of March, 1656, by the steward of the lady of the manor, when one Martin Kirke took of the lady of the manor in full court, by delivery of the said steward, by the rod, according to the custom of the said manor, one message, having done fealty to the lady, was thereby admitted tenant' (MS. Extracts from the records). "This," continues Bozman, "seems to have been conformable to the ancient practice of courts baron in England, on the admission of any tenant of a manor. The steward thereof, taking hold of one end of a rod and the tenant of the other, the former repeats to him: 'The lord of of this manor by me his steward doth deliver you seisin by the rod, and admit you tenant to the premises,' &c. (See the Practice of Courts Leet

and Courts Baron, by Chief Justice Scroggs)." Here, then, is instanced by Bozman himself a concrete case of a manorial court, the records of which Mr. Bozman appears to have seen.

But now follows mention of a Court Leet upon the identical manor, the records of which Mr. Bozman had not seen but which are now first published. Bozman came upon the traces of manorial courts at St. Clement's, not from local records, but from public records. He says, ii, 581: "Also, in October, 1661, Thomas Gerrard petitioned to the provincial court, stating, that at a court leet and court baron, held for the manor of St. Clement's, on the 27th of October, 1659, Robert Cole was fined, for marking one of the Lord of the manor's hogs, and prayed to have satisfaction for the unlawful marking and killing such hog, as the laws of the province provided."* The grant of this manor, which lay in St. Mary's county, was made to Thomas Gerrard in the year 1639, and appears to be one of the oldest grants of a manor now extant on the records of the province. It contained a clause of power to Thomas Gerrard to hold a court baron and court leet. The last mentioned case, which occurred in this manor, seems to have been one of those petty misdemeanors, which would have been properly cognizable by a court leet in England; but, as the lord of a manor could not judge in his own case, for a trespass to himself, (See 2 Bacon's Abridgement, 505,) this principle probably occasions his application, as above, to the provincial court."

The local Records of the Manor of St. Clement's, herewith published, indicate that a Court Leet was there held for at least a considerable period, namely from 1659 to 1672. The Records are defective and may originally have covered a much longer time. The manuscript is well preserved, what there is of it, and is written in the quaint old English hand, characteristic of English clerks of the seventeenth century wherever found, whether among the Pilgrim Fathers or among the Pilgrims of St. Mary's. The manuscript was presented to the Maryland Historical Society many years ago by a Catholic gentleman, Colonel B. U. Campbell, who died April 28, 1855, aged sixty, and who was buried with great honors, after a celebration of High Mass in the Cathedral, in the presence of the Archbishop and "all the Roman Catholic clergy" (See contemporary newspaper accounts, *e. g.* *The American*, May 1, 1855). Colonel Campbell was a partner in the Baltimore branch of the well known English bankers, Brown and Company of London, and he is spoken of in the resolutions of the Maryland Historical Society, May 3, 1855, as "one of its earliest and most valuable members." The manuscript Records of the Catholic Manor of St. Clement's, presented to the Society by Colonel Campbell, together with other documents relating to the History of Maryland, is preserved in Portfolio No. 6, Document I, and is described in the Catalogue of the Manuscripts of the Society, printed in 1854, under the supervision of

* The above is not the exact text of Gerrard's petition, but conveys its substance. H. B. A.

Lewis Mayer, Esq., assistant librarian, as "Manuscript Records of Courts Baron and Courts Leet, held in St. Clement's Manor, at several times, from 1659 to 1672, folio." Mr. Gatchell, the present assistant librarian of the Society, has put the Editor in possession of these facts touching the original records of St. Clement's and concerning Mr. B. U. Campbell, who presented them to the Society.

The existence of these Records was, in fact, well known to gentlemen who are familiar with the library resources of the Maryland Historical Society, but Mr. Johnson is the first to make known the historical significance of Court Leet in Maryland. Not until his inquiries touching the origin and character of Old Maryland Manors were well advanced did he obtain knowledge of the existence of these Records. His inquiries of Mr. George Johnston, author of the History of Cecil County, as to the possible survival of the old English Court Leet upon Maryland Manors led that gentleman to a conference with Mr. J. W. M. Lee, librarian of the Maryland Historical Society and to the examination of the long catalogued but never utilized Records of the Manor of St. Clement's. Mr. Lee kindly undertook the task of making an exact transcript of the Records and thanks are due to him for supervising their accurate reproduction by the printer.

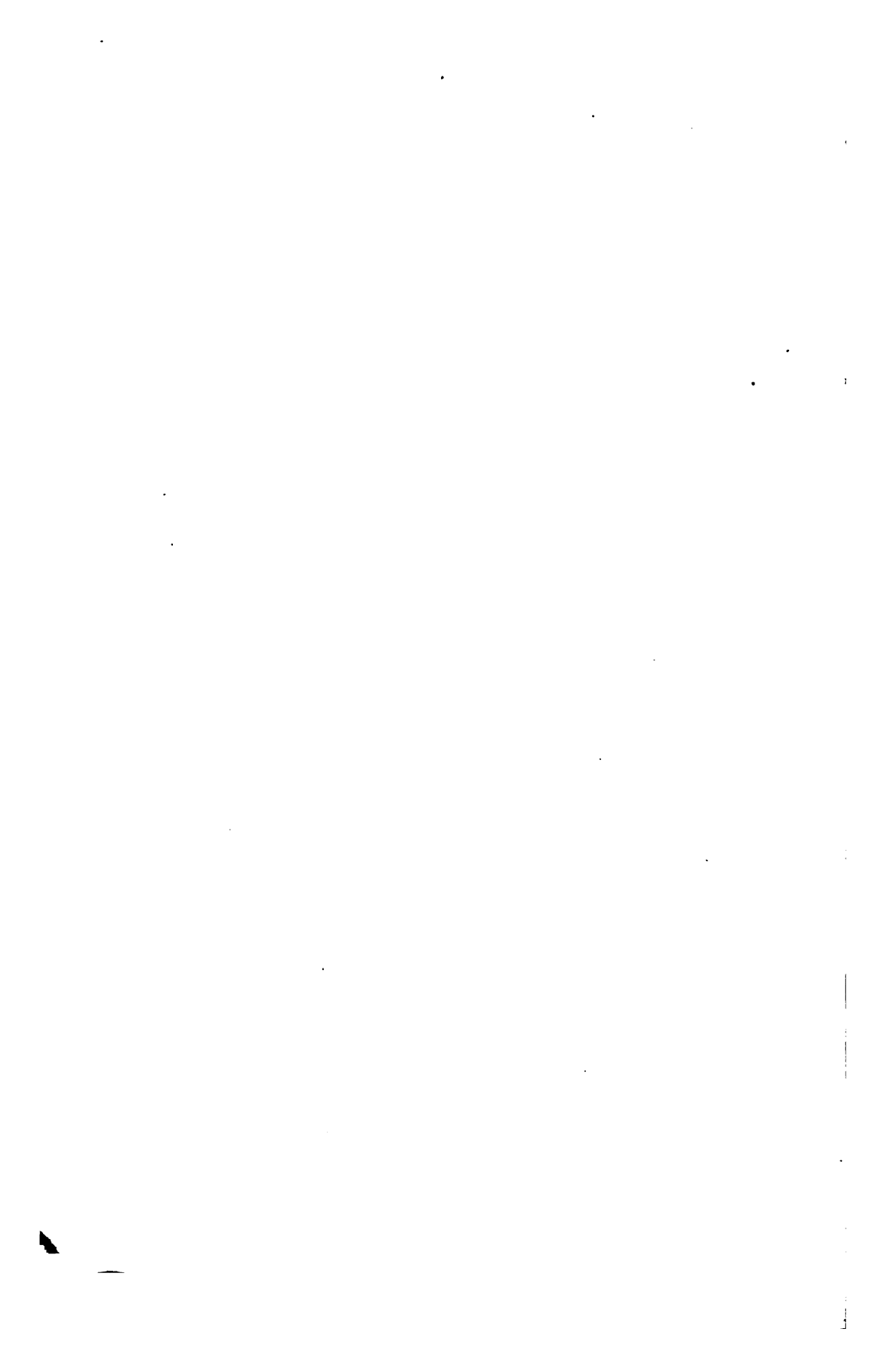
The survival upon one of the Maryland Manors, of a Court Leet (German *Leute*, people), or that old English popular court of manorial tenants, is interesting and important as showing the continuity in *Terra Mariae* of that ancient Germanic institution of village *folcmote*, which has evolved into modern Parish and Vestry-Meetings, and also into Town-Meetings and City Councils.

The Editor of this series takes great pleasure in publishing the following note touching Cooke's Hope Manor in Talbot County, communicated by the eminent antiquary and local historian, Dr. Samuel A. Harrison, of Easton, Maryland. "A Manor of one thousand acres granted to Miles Cooke by patent dated Jan 17th 1659, under the great seal of Cæcilius, Lord Baltimore, lying north of Great Choptank river, on the north side of the east branch of a creek of the said river called Tredavon. This manor is mentioned in a deed from Mr. Saml. Cooke, through his attorneys, to Mr. John Edmondson, dated Apr. 17th 1683. The following is an extract from this deed of the attorneys of S. C. to J. E. recorded in Liber No. 4, p. 195, of the Land Records of Talbot County, Maryland.

" . . . Containing and Laid out for One thousand Acres (more or less) together with all Royalties & Priviledges (Royal mines excepted) most usually belonging to Mannors in England, to have and to hold ye same unto him ye s^d Miles Cooke his heirs and assigns for ever to be holden as of ye Honour [?] of St. Marey's in free and Comon Soccage by fealty only for all services under ye yearly rent of Twentie [?] Seventie] Shillings Sterling in silver or Gold or ye full value thereof in such comodities as ye s^d Lord Proprietary or his heirs should accept thereof, and ye s^d Lord Proprietary did by his Letters Pattent Erect ye s^d Thousand Acres into a

Mannor by ye name of ye Mannor of Cookes Hope Together with Court Baron and all things thereunto Belonging by ye Law or Custome of England, as by ye s^d Letters Pattents Relation thereunto had doth and may more at large appeare."

The following note upon manorial Tithingman in Maryland is thought by the Editor to be of sufficient interest to justify its reprint from Bozman, ii, 138, who quotes it from the manuscript Bill of 1638, folio 21. The motto relating to Tithingmen, printed upon the reverse of the bastard-title of this paper, was taken from Bacon's printed Laws of Maryland, which only gives the heading of the Bill. The following is an extract from the text: "The lord of every manor within this province, (after any manor shall be erected), shall yearly at the first court baron held after Michaelmas in any year nominate and appoint some inhabitant of the manor, (not being in the council), to be tithing-man of that manor, to have the same power as a tithing-man in England." Bozman adds, "The duties of a tithing-man in England were, at this time, nearly the same as those of a *petty* constable. They were usually chosen by the jury at the court-leet,—a criminal court appertaining to a manor."



NOTE ON THOMAS GERRARD, LORD OF ST. CLEMENT'S MANOR.

Thomas Gerrard, Surgeon, was a brother-in-law of Marmaduke Snow, and came into the province about the year 1638. On the 29th of October, 1639, "Thomas Gerrard Gent. demandeth Land of the Lord Proprietary due him by conditions of Plantation for transporting himself with five able men servants in the years of our Lord 1638 and 1639." The five able men servants were John Longworth, Peter Hayward, Samuel Barrett, Thomas Knight and Robert Brassington. The following day (Oct. 30th) an order was issued to the Surveyor to lay out for Mr. Thomas Gerrard, 1000 acres of land including St. Clement's Island. The land was surveyed Nov. 2, and the Surveyor's report is as follows: "Set forth for Thomas Gerrard Gent. a neck of land lyeing over against St. Clements Island, bounding on the South with Potowmack River, on the north east with a Creek running westward out of St. Clements Bay, Called St. Patrick's Creek, on the east with the said Clement's bay, on the northwest with a Creek running out Mattapanient bay called St. Catherines Creek on the west and south west with part of the said Bay and Potowmack River, the said neck containing in the whole nine hundred and fiftie acres or thereabouts. Likewise set forth for the said Thomas Gerrard, the Island over against the said neck called St. Clements Island, and Containing four score acres or thereabouts. (Signed) John Lewger Surveyor."

On the following day (Nov. 3), a patent was issued to Thomas Gerrard of the above tract, constituting it a Manor by the name of St. Clement's Manor, and giving him, his heirs and assigns authority to hold Courts Baron and Courts Leet upon the said Manor. Thos. Gerrard was commissioned Privy Councilor September 18, 1644, and being several times reappointed, held this position until 1658. He himself was a Roman Catholic, but his wife, Susan, was a Protestant. (See trial of Fitzherbert, in Davis' Day Star). In 1642 he was accused before the council of disturbing the worship of the Protestant inhabitants by taking away the Key of their Chapel and carrying away their books. He was found guilty and sentenced to pay a fine 500 pounds of tobacco. He was still alive in 1666, and had children. The approximate date of his death and the names of his children could be learned from his will which is no doubt on record at Annapolis.

CHRISTOPHER JOHNSTON, JR., M. A., M. D.



RECORDS*
OF THE
COURT LEET AND COURT BARON
OF
ST. CLEMENT'S MANOR,
1659-72.

ST. CLEMENTS } ss A Court Leet & Court Baron of Thomas Gerard
MANOUR } Esq: there held on Thursday the xxviith of October
1659 by Jn: Ryves gent Steward there.

CONSTABLE: Richard foster Sworne.

RESIANTS: Arthur Delahay: Robt: Cooper: Seth Tinsley: Willm: at
Robt: Coles: Jn: Gee Jn: Green Benjamin Hamon Jn: Mattant.

FFREEHOLD^{ss}: Robt: Sly, gent: Willm: Barton gent: Robt: Cole: Luke:
Gardiner: Barthollomew: Phillips Christopher Carnall: Jn: Norman:
Jn: Goldsmith.

LEASEHOLDERS Thomas Jackson: Rowland Mace: Jn: Shankes Richard
foster: Samuell Harris: John Mansell: Edward Turner: ffancis
Sutton with: Jn: Tennison:

JURY AND HOMAGES	Jn: Mansell Bartholl: Phillips Jn: Shankes Jn: Gee Edward Turner Seth Tinsley	}	Sworne	Jn: Tennison Jn: Goldsmith Jn: Mattant Sam: Harris Jn: Norman xofer Carnall	}	Sworne
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* My thanks are due to the Maryland Historical Society for permission to print these records. I am also under obligation to Mr. J. W. M. Lee, Librarian of the Society, for kind and efficient aid in deciphering and transcribing them; and to Mr. Geo. Johnston, of Elkton, for calling my attention to them in the first instance.—J. J.

ORD^r AG^r SAM: Wee the aboue named Jurors doe p^rsent to the Cou^rt that
HARRIS wee finde how about the 8^d day of octob^r 1659 that:

Jmprimis wee p^rsent that about the third of October 1659 that Samu-
uell Harris broke the peace wth a Stick and that there was bloudshed
cōmitted by Samuuell Harris on the body of John Mansell for w^{ch} hee is
fined 40^l tob w^{ch} is remitted de gratia dni.

Wee doe find that Samuuell Harris hath a licence fro' the Gou'no^r &
wee conceive him not fitt to bee p^rsent.

ORD^r AG^r ROBT^r Jtem wee p^rsent Robert Cole for marking one of the
COLE. Lord of the Manno^r hoggs for w^{ch} hee is fined 2000^l
Tobco affered to 1000^l.

Jtem wee p^rsent Luke Gardyner for catching two wild hoggs & not
restouringe the one halfe to the Lord of the Manno^r w^{ch} he ought to
haue done & for his contempt therein is fined 2000^l Tobco affered to
200^l of Tobco.

Jtem we p^rsent that Cove Mace about Easter last 1659 came to the
house of John Shancks one of the Lord of the Manno^r tenants being
bloudy & said that Robin Coox & his wife were both vpon him & the
said John Shancks desired John Gee to goe wth him to Clove Maces
house & when they the s^d John Shancks & John Gee came to the said
Cloves his house in the night & knocked att the dore asking how they
did what they replied then the s^d John Shancks & John Gee haue for-
gotten But the s^d John Shancks asked her to come to her husband &
shee replied that hee had abused Robin & her and the said John Shancks
gott her consent to come the next morning & Robin vp to bee freinds
wth her husband & as John Shancks taketh shee fell downe on her knees
to bee freinds wth her s^d husband but hee would not bee freinds wth her
but the next night following they were freinds and Bartholomew Phil-
lipps saith that shee related before that her husband threatened to beate
her & said if hee did shee would cutt his throat or poyson him or make
him away & said if ever Jo: Hart should come in agayne shee would
gett John to bee revenged on him & beate him & hee beared the said
William Asiter say th^t shee dranke healths to the Confusion of her
husband and said shee would shoee her horse round & hee the said Bar-
tholomew Phillips heard the said Robin say if ever hee left the house
Cloves should never goe wth a whole face. It is ordered that this busi-
nesse bee transferred to the next County Co^rt according to Law.

Also wee present John Mansell fore entertayning Beniamyn Hamon
& Cybill his wife as Jnmates Jt is therefore ordered that the s^d Man-
sell doe either remove his Jnmate or give security to save the pish
[parish] harmlesse by the next Co^rt vnder payne of 1000^l Tobco^r.

Also wee p^rsent Samuuell Harris for the same and the same order is
on him that is on John Mansell.

Also wee present the Freeholders that have made default in their appearing to forfeit 100^l Tobco apeice.

Wee doe further p^rsent that our Bounds are at this p^resent un^pfect & very obscure. Wherefore wth the consent of the Lord of the Manno^r Wee doe order that every mans land shall bee bounded marked and layed out betweene this & the next Co^{rt} by the p^rsent Jury wth the assistance of the Lord vpon payne of 200^l Tob'coe for every man that shall make default.

S^r. CLEMENTS } sst At a Court Leet & Co^{rt} Baron of Thoms Gerard
MANNO^r } Esq^r there held on thursday the 28th of Aprill 1660
by John Ryves Steward there

CONSTABLE Richard ffoster

RESIANTS Robert Cowx William Roswell John Gee John Greene Beniamin Hamon

FREEHOLDERS: Robert Sly gent Will'm Barton gent Robt Cole Luke Gardiner Christopher Carnall John Norman John Goldsmith.

LEASEHOLDERS Thom's Jackson Richard ffoster Samuel Norris John Mansfield Edward Turner John Shancks Arthur Delahay Clove Mace John Tennison

JURY AND	}	Christopher Carnall	}	Richard Smith
HOMAGE		John Tennison		John Norman
		John Gee		John Love
		Edward Turner		George Harris
		Beniamyn Hamon		Willm Roswell
		John Greene		Walter Bartlett

Wee the above named Jurors doe p^rsent to the Co^{rt} Luke Gardiner for not doeing his Fealty to the Lord of the Manno^r It is ordered therefore that hee is fined 1000^l of Tobco

Wee p^rsent fower Jndians viz^t

for breakinge into the Lord of the Manno^r orchard whereof three of them were taken & one ran away & they are fyned 20 arms length of Roneoke.

Wee p^rsent also two Indian boyes for being taken wth hoggs flesh & running away fro' it & they are fined 40 arms length.

Wee p^rsent also a Cheptico Jndian for entringe into Edward Turners house & stealinge a shirt fro' thence & hee is fined 20 arms length if he can be knowne

Wee p^rsent also Wickocomacoe Jndians for takeinge away Christopher Carnalls Cannowe fro' his landing & they are fyned 20 arms length if they bee found

Wee p^rsent also the King of Cheptico for killing a wild sow & took her piggs & rayسد a stock of them referred to the ho^{ble} the Gouno^r.

Wee concieve that Indians ought not to keepe hoggs for vnder p^rtence of them they may destroy all the hoggs belonging to the Man^{no}^r & therefore they ought to bee warned now to destroy them else to bee fyned att the next Court Referred to the ho^{ble} the Gou^{no}^r.

Wee reduce Luke Gardiners fyne to 50^l of Tobcœ

We am^{ce} the fower Indians to 50 arms Length of Roneoke & the Indian that had his gun taken fro' him to bee restored agayne to the owner thereof

The Indian boyes wee am^{ce} 40 arms Length of Roneoke as they are above am^{ced}

Wee am^{ce} the Cheptico Indian for stealing Edward Turners shirt to 20 arms length of Roneoke

Wee am^{ce} also Wickocomacoe Indians for takeinge away Christopher Carnalls Cannowe to 20 arms Length of Roneoke

Memorand that John Mansfeild sonne of ——— Mansfeild deceased came into this Co—— did atturue tẽnt to the Lord of this Manno^r

S^r CLEMENTS } A Court Leet & Court Baron of Thomas Gerrard esquire
MANNO^r } there held on Wednesday the Three & Twentieth of
October 1661. by Thomas Mannynge Gent Steward there for this tyme

BAILIFF William Barton Gent.

CONSTABLE Raphael Haywood Gent

RESIANTS M^r Edmond Hanson George Bankes Francis Bellowes Tho:
James John Gee Michael Abbott.

FFREEHOLDERS Robt Sly Gent Will Barton Gent Luke Gardiner Gent,
absent Robt. Cole Gent. Raphael Haywood Gent Bartho Phillips Gent.

JURY	Rich : ffoster		Robt Cole
	Edward Conoray		Bartho Phillips
	Edward Runsdall		Edward Conovay
	John Shankes		Edward Ransdell
	John Knape		Gerett Brenton
	Gerett Brenson	JURY AND	Clobe Mace
	Clove Mace	HOMAGE	Edmond Hanson
	Robt Cooper		Robt Cooper
	Arthur De La huy		Arthur De La hay
	John Tenison		Wm Rosewell
			Tho: James
			Mich. James.

[Several leaves of the record missing.]

The Court adjoined till two of the Clocke in the afternoone.

John Gee and Rich. foster sworne

The Jury presents that Bartho: Phillips his Landes not marked and Bounded Round

The Jury Lykewise present that the Land belonging to Robt Cooper and Gerett Breden is not marked and bounded Round

The Jury Presents Robt Cooper for Cutting of sedge on S^t Clements Jsland and fowling wthout Licence for w^{ch} he is Amerced 10^l of Tob. Affered to 10^l of Tob.

The Jury Present that Edward Conoray while he was Rich fosters servant did by accident worray or Lugg wth doggs on of the L^d of the manno^r Hoggs and at another tyme Edward Conoray going to shoot at ducks the dog did Run at somebodys Hoggs but we know not whose they were and did Lugg them for w^{ch} the Jury doe Amerce Rich: foster 50^l of Tob Affered to 20^l of Tob.

The Jury presents M^r Luke Gardiner for not appearing at the Lords Court Leet if he had sufficient warning

S^r CLEMENTS } as A Court Leet of Thomas Gerard Esq^r. there held on
MANO^r } Thursday the eighth day of September 1670. by
James Gaylard gent. steward there.

ESSOINES: Benjamin Salley gent James Edmonds Rich^d Vpgate Cap^t
Peter Lefebur these are essoined by reason they are sick and cannot attend to do their suit.

FFREEHOLDERS: Justinian Gerard gent, Robt^e Sly gent, Thom Notley gent, Capt Luke Gardiner, Benjamin Salley gent, Robert Cole, Barthollomew Phillippis, Jn^o Bullock W^m Watts, James Edmonds, Richard Vpgate, Simon Rider, Jn^o Tenison, Rich^d. foster, Edward Connory, Jno^o Shanks, Jn^o Blackiston,

LEASEHOLDERS: Robte Cowper Capt Peter Lefebur, Henry Shadock, Rich^d. Saunderson Jn^o Hoskins, Thomas Catline.

RESIANTS: Rich^d Marsh, Joseph ffowler Roger Dwiggin Thom Casey, Jn^o Saunders, Henry Porter, ffrancis Mondeford W^m Simpson W^m Georges George B — es W^m West, W^m Cheshire, Jn^o Paler, Robte ffarer George Keith, Joshua Lee James Green, Thom oakely, Jn^o Turner, Maunce Miles, Jn^o Dash W^m ffelstead Jn^o Chantry:

JURY	Rich ^d ffoster	} Sworne	Jn ^o Blackiston	} Sworne
	Jn ^o Tenison		Jn ^o Stanley	
	Edward Connory		Rich ^d Saunderson	
	Robte Cowper		Jn ^o Bullock	
	Thom Cattline		Thom oakely	
	W ^m Watts		Jn ^o Paler	

BAYLIFF Jn^o Shanks & Sworne.

PRESENTM^{ts}: Wee p^rsent that Barthollomew Phillips his land was not layd out according to order of Court formerly made wherefore he is fined one hundred pounds of tobacco & caske to the Lord.

We p^rsent John Tenison for suffering his horses to destroy John Blakiston's Corne field.

We p^rsent that Jn^o Stanly and Henry Neale killed three marked hogs vpon the Lords Mano^r; w^{ch} Capt Gardiner received w^{ch} hogs were not of Capt Gardiner's proper marke which is transferred to the next Provinciaall Court, there to be determined according to the Law of the Province.

We p^rsent that Edward Connery killed or caused to be killed five wild hogs vpon the Lords Mano^r; this was done by the Lords order and License

We p^rsent that the Lord of the Manno^r; hath not provided a paire of stocks, pillory, and Ducking Stoole Ordered that these Instrum^{ts} of Justice be provided by the next Court by a generall contribution throughout the Mano^r;

We p^rsent That Edward Convery's land is not bounded in

We p^rsent That Thomas Rives hath fallen five or sixe timber trees vpon Richard ffosters land within this Mano^r; referred till view may be had of Rives his Lease

We p^rsent That Robert Cowper's land is not bounded according to a former order for which he is fined 100^l tobco.

We p^rsent That Jn^o Blackiston hunted Jn^o Tenisons horses out of the s^d Blackistons corne field fence which fence is proved to be insufficient by the oathes of Jn^o Hoskins and Daniell White

We p^rsent Richard ffoster to be Constable for this Mano^r for the yeare ensuing who is sworne accordingly.

We p^rsent that Jn^o Bullocks land is not bounded.

We p^rsent M^r Thomas Notly, M^r Justinian Gerard & Capt Luke Gardiner, ffreeholders of this Mano^r; for not a appearing to do their suit at the Lords Court wherefore they are amerced each man 50^l of tobacco to the lord

Jt is ordered That every mans land wthin this Manno^r whose bounds are vncertain be layd out before the next Co^{rt}; in p^rsence of the greatest part of this Jury according to their severall Grants vnder penalty of 100^l tobco for every one that shall make default.

**AFFEIR Thomas Catline }
Willm Watts } Sworne.**

**S^r CLEMENTS }
MANO^r. }^{ss} A Court Leet & Court Baron of Thomas Gerard Esq^r there held on Monday the 28th of October 1672 by James Gaylard gent Steward there,**

LESSONIES

FFREEHOLDERS. Justinian Gerard gent Gerard Sly gent Thomas Notley gent Benjamine Sally gent Capt Luke Gardiner Robt^e Cole Bartholomew Philips Jn^o Bullock. W^m Watts James Edmonds Richard Vpgate Simon Rider John Tennison Richard Foster Edward Connory Jn^o Shankes Jn^o Blackiston Thomas Jourdain.

LEASEHOLDERS Capt Peter Lefebur Henry Shaddock Richard Saunderson Jn^o Hoskins Thomas Catline

RESIANTS Joseph fowler Roger Dwiggin Henry Porter W^m Simpson William Georges W^m West W^m Cheshire Jn^o Paler Joshua Lee Maurice Miles Jn^o Dash W^m ffelstead Richard Chillman Robte Samson Henry Awsbury Jn^o Hammilton W^m Wilkinson Abraham Combes Willm Harrison Jn^o Rosewell Vincent Mansfeild Edward Williams Marmaduke Simson Nicholas Smith Humphry Willey James Traske Derby Dollovan Jn^o Vpgate Thomas Rives Michael Williams Jn^o Sprigg Charles Rookes ffrancis Knott Richard Hart Willm Polfe Thomas Attaway James Green Jn^o Ball Thomas Liddiard Edward Bradbourne Jn^o Suttle Jn^o Lee Jn^o Barefoot ffrancis Wood.

JURY	W ^m Watts	} Sworne.	Jn ^o Bullock	} Sworne.
	Jn ^o Tennison		Thom oakly	
	Jn ^o Rosewell		Thom Jorden	
	Jn ^o Stanly		Jn ^o Hoskins	
	Richard Saunderson		Jn ^o Paler	
	ffrancis Knott.		Vincent Mansfeild	

Edward Bradbourne complaineth agt Jn^o Tennison that he unjustly deteineth from him 200^l tobco to the contrary whereof the s^d Tennison having in this Coart taken his oath the s^d Bradbourne is nonsuited.

We p^rsent Jn^o Dash for keeping hoggs & cattle upon this Manno^r for wh^{ch} he is fined 1000^l tobco.

We p^rsent Henry Poulter for keeping of hoggs to the annoyance of the lord of the Mano^r. Ordered that he remove them within 12 days under paine of 400^l tobco & caske.

We p^rsent the s^d Henry Poulter for keeping a Mare & foale upon this Mano^r to the annoyance of Jn^o Stanly ordered that he remove the s^d mare & foale wthin 12 daies vnder paine of 400^l of tobco & caske

We p^rsent Joshua Lee for injuring Jn^o Hoskins his hoggs by setting his doggs on them & tearing their eares & other hurts for which he is fined 100^l of tobco & caske

We p^rsent Humphry Willy for keeping a tipling house & selling his drink without a License at unlawfull rates for w^{ch} he is fined according to act of assembly in that case made & provided

We p^rsent Derby Dollovan for committing an Affray and Shedding blood in the house of the s^d Humphry Willy Ordered that the s^d Dolovan give suretys for the peace.

We p^rsent W^m Simpson for bringing hoggs into this Mano^r for which he is fined 3^l of tobco And ordered that he remove them in 10 days vnder paine of 300^l of tobco & caske

We p^rsent Robte Samson & Henry Awsbury for selling drinke at unlawfull rates for which they aré each of them fined according to act of Assembly.

We p^rsent [Simon Rider for keeping an under tenant contrary to the teno^r of his Deed referred till view may be had of the s^d Deed.

We p^rsent that Raphaell Haywood hath aliened his freehold to Simon Rider upon w^h alienacōn there is a reliefe due to the lord

We p^rsent an alienacōn from James Edmonds to Thomas Oakely upon w^h there is a Reliefe due to the lord and Oakely hath sworne fealty.

We p^rsent that upon the death of M^r Robte Sly there is a Releife due to the lord & that. M^r Gerard Sly is his next heire who hath sworne fealty accordingly

We p^rsent an alienacōn from Thomas Catline to Anne Vpgate

We p^rsent that upon the death of Richard Vpgate there is a Releife due to the lord & [Anne] Vpgate his relict is next heire

We p^rsent M^r Nehemiah Blackiston tenant to the land formerly in possession of Robert Cowper M^r Blackiston hath sworne fealty accordingly

We p^rsent an alienacōn from W^m Barton to Benjamine Sally gent upon w^h there is a Releife due to the lord & M^r Sally hath sworne fealty to the lord.

We p^rsent an alienacōn from Richard ffoster of p^t of his freehold to Jn^o Blackiston upon which there is a Releife due to the lord

We p^rsent a Stray horse taken upon this Mano^r and delivered to the lord

We p^rsent Robte Cole for not making his appearance at this Court for which he is amerced 10^l of tobco affeired to 6^l of tobco.

We p^rsent Edward ———nder to be Constable for this yeare ensuing Sworne accordingly.

AFFEIRO^{RS} W^m Watts } Sworne.
 Jn^o Bullock }

IX-X

VILLAGE COMMUNITIES
OF
CAPE ANN AND SALEM

"The nature of everything is best seen in its smallest portions."—*Aristotle*.

"The doctrine of the sovereignty of the people came out of the townships and took possession of the states. Political life had its origin in the townships; and it may almost be said that each of them formed an independent nation."—*De Tocqueville*.

"By Cape Anne there is a plantation a beginning by the Dorchester [England] men, which they hold of those of New Plimoth."—*Captain John Smith*.

"In planting the colony at Cape Ann, the stock was consumed, but a foundation was laid on which now rests one of the leading States of a great nation."—*Babson, Hist. of Gloucester*.

"There are in all of us, both old and new planters, about three hundred, whereof two hundred of them are settled at Nehum-kek, now called Salem, and the rest have planted themselves at Masathulets Bay, beginning to build a town there, which we do call Cherton or Charles town."—*Higginson*.

"Some native merchant of the East, they say,
(Whether Canton, Calcutta or Bombay),
Had in his counting-room a map, whereon
Across the field in capitals was drawn
The name of SALEM, meant to represent
That Salem was the Western Continent,
While in an upper corner was put down
A dot named Boston, SALEM'S leading town."—*Rev. Charles T. Brooks*.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

IX-X

VILLAGE COMMUNITIES
OF
CAPE ANN AND SALEM

BY HERBERT B. ADAMS, Ph. D.

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I.

THE

FISHER-PLANTATION

AT

CAPE ANN.

EARLY in the year 1624 Robert Cushman, the chief business agent of the Pilgrim fathers, wrote Governor Bradford from England: "We have tooke a patente for Cape Ann."¹ This patent, which may be seen in the library of the Essex Institute at Salem, was issued by Lord Sheffield, a member of the Council for New England, to the associates of Robert Cushman and Edward Winslow, the latter having been sent to England in 1623 in the interests of Plymouth Colony. The patent gave "free liberty, to ffish, fowle, hawke, and hunt, truck and trade" in the region of Cape Ann. Five hundred acres of land were to be reserved "for publig vses, as for the building of a Towne, Scholes, Churches, Hospitalls" and for the maintenance of such ministers, magistrates, and other local officers as might be chosen by the corporation. Thirty acres of land were

¹Bradford, History of Plymouth Plantation, 160.

to be allotted to every person, young or old, who should come and dwell at Cape Ann within the next seven years. These allotments were to be made "in one entire place, and not stragling in dyvers or remote parcells." The whole grant was not to exceed one and a half miles in length along the water front. A yearly rent of twelve pence was to be paid Lord Sheffield for every thirty acres occupied. Authority was given to make laws and ordinances for the government of the plantation and to repel intruders by force of arms.

Such was the legal basis for the settlement and defence of an English town upon Cape Ann, where Gloucester was afterwards built. In these provisions for local government, schools, churches, hospitals, freehold land tenure, and commons for public use, we recognize the leading institutions which have entered into the town-life of New England. The idea of all these institutions originated in Old England, and ancient statutes of the realm are full of legislation regarding them. Even the Yankee disposition to truck and trade, to hunt and fish, was inherited from a nation of traders and adventurers, and by them from their Germanic forefathers. English commerce and English colonies sprang primarily from the amber-dealing tribes of the Baltic and sea-roving, colonizing bands of Northmen. The spirit of Saxon and Norman enterprise dawned upon New England from shores beyond the ocean.

But the Fisher Plantation at Cape Ann proved for the Pilgrims a failure, partly because, as Bradford says, "they made so pore a bussines of their fishing;"² and partly because of the exorbitant charges by English merchants for advancing colonial goods. Bradford says, "they

² Bradford, 197.

put 40 in ye hundred upon them, for profite and adventure, outward bound; and because of ye venture of ye paiment homeward, they would have 30 in ye hundred more, which was in all 70 per cent!"³ The audacity of these shop-keepers who wrote their "loving friends" about "ye glorie of God and the furthrance of our countrie-men" is, however, less amazing than the fearless enterprise of the colonists who dared to assume such financial burdens, and actually succeeded, in a few years, in paying off a debt of £2,400. They did it by an extensive fur-trade wth the Indians, whom they paid in wampum, the value of which the Pilgrims had learned from Dutch traders, and the art of manufacturing which from quahaugs and periwinkles, they probably acquired from the Narragansetts.⁴

³ Bradford, 201. James Shirley, one of the English capitalists, writing to Governor Bradford, says: "It is true (as you write) that your ingagements are great, not only the purchass, but you are yet necessitated to take up y^e stock you work upon; and that not at 6 or 8 per cent. as it is here let out, but at 30, 40, and some at 50 per cent. which, were not your gaines great, and God's blessing on your honest indeavours more than ordinarie, it could not be y^t you should longe subsiste in y^e maintaining of, & upholding of your worldly affaires" (Bradford, 228-9). Such facts are very solid testimony in favor of the business energy of the Pilgrim fathers.

⁴ "That which turned most to their profite," says Bradford (234) "was an entrance into the trade of Wampampeake" (wompam and peag). They learned the value of this kind of currency from the Dutch who "tould them how vendable it was at their forte Orania" (Fort Orange, or Albany). The Pilgrims bought £50 worth of this shell money from the Dutch, and introduced it in payment for beaver and other peltry, among the inland tribes of New England, and at the Plymouth trading post on the Kennebec. "At first," says Bradford, very naively, "it stuck, & it was 2 years before they, [i. e. the Plymouth people] could put of this small quantity, till y^e inland people knew of it; and afterward they could scarce ever gett enough for them, for many years together." We have been told by a local antiquary in Plymouth that the Pilgrims established a manufactory of *flat* wampum upon Plymouth beach. Probably they got the idea from the Rhode Island Indians, "for," as Bradford says, "ye Narigansets doe geather ye shells of which yey make it from their shors" (235). Compare Hubbard's History of New England, to 100; Wheildon's Curiosities of History, 32; Arnold's Rhode Island, i, 81; Collections of Rhode Island Hist. Soc., iii, 20 *et seq.* There appear to have been two sorts of shell-money; the black or dark-purple, which was made from quahaugs or round clams, and the white, which was made from the stem of periwinkles. J. Hammond Trumbull says "*wompam* was the name of the white

English speculators were not slow to realize the possible advantages which might accrue from an occupation of the stern and rock-bound coast of New England. Even before the issue of the Cape Ann patent to men of Plymouth, certain merchants from the west of England, especially of Dorchester,⁵ had sent their agents to catch fish off the promontory of Cape Ann, which in 1614 had been named "Tragabizanda" by Captain John Smith "for the sake of a lady from whom he received much favor while he was a prisoner amongst the Turks,"⁶ but which soon gracefully yielded to the baptismal name of the consort of King James. In 1624, encouraged by the fame of New Plymouth and by the Rev. John White of Dorchester, the merchants of that neighborhood sent over sundry persons to carry on a regular plantation at Cape Ann, "conceiving that planting on the land might go on equally with fishing on the sea." John Tylly was appointed overseer of the fisheries and Thomas Gardener, of the plantation, at least for one year. At the end of that time,

beads *collectively*; when strung or wrought in girdles, they constituted *wamp*-*peg* . . . The English called all *peag*, or strung beads, by the name of the white, *wampom*," see pp. 140, 175-7, of his edition of Roger Williams, "Key into the language of America," Publications of the Narragansett Club, vol. i. This remarkable treatise by Roger Williams, which may also be found in the Collections of the Rhode Island Hist. Soc. vol. 17-163, contains a chapter on Indian Money or "Coyne," which is, perhaps, the most authentic source of original information concerning this subject. Other notices may be found in Wood's New England's Prospect ii, cap. 3; Lechford's Plaine Dealing, (Trumbull's ed. 1867) 116; and Josselyn's Account of Two Voyages to New England (ed. 1865) 110-11. The latter says the Indians work out their money "so cunningly that neither *Jew* nor devil can counterfeit."

⁵ Hubbard, General History of New England, 105.

⁶*Ibid.* Compare Capt. John Smith's description of New England (ed. 1865) 17, where we find "Cape Trabigzanda" given as the old name of "Cape Anne." Elsewhere, 44, he speaks of "the faire headland Tragabigzanda." However the Turkish beauty would have spelled her name if she had had a chance, it is quite certain that Princess Anne of Denmark (1589-1619), daughter of Frederic II, spelled hers with an "e." The Patent was for "Cape Anne" and the older writers all have it so. Thornton also adopts this, the true historic form. Although Cape Ann is now sanctioned by popular usage, it is nevertheless a kind of slipshod vulgarism, like Rapidan for Rapid Ann, Mary Ann for Mariana or Mariana. Article on "Tragabizanda" by H. B. Adams in the *Boston Advertiser*, Aug. 17, 1883.

Roger Conant was made governor. The little colony appears to have sheltered itself under the protection of the Plymouth patent.⁷ Captain John Smith, in his *Generall Historie*, which was published in 1624, with an abstract of Mourt's Relation, says "by Cape Anne there is a plantation a beginning by the Dorchester men, which they hold of those of New Plimoth, who also by them have set up a fishing worke."⁸

A quarrel soon broke out between the two parties. In the absence of the Plymouth fishermen, some Dorchester employes, under the command of one Mr. Hewes, came over to Cape Ann and took possession of a fishing stage built by Plymouth people the year before. Captain Standish and his men came up and peremptorily demanded the restoration of the staging. The occupants barricaded themselves upon it with hogsheads, while the Captain's party stood threatening upon shore. The dispute grew hot, says Hubbard, and high words passed between the opposing parties. The affair might have ended in blood and slaughter, if it had not been for the prudence and moderation of Governor Conant, who promised the Plymouth men that another staging should be built for them. Hubbard's pious condemnation of Standish, who undoubtedly had justice on his side, is an unconscious satire upon "the unco guid" spirit which pervades early New England history. "Captain Standish had been bred a soldier in the Low Countries, and had never entered the school of our Savior Christ, or of John the Baptist, his harbinger, or, if he was ever there, had forgot his first lessons, to offer violence to no man, and to part with the cloak rather

⁷ Thornton, *Landing at Cape Anne*, for text of Patent and interesting observations thereon, 31-47.

⁸ Smith, *Generall Historie*, 247. Cf. Bradford, *Hist. of Plymouth Plantation*, note by Mr. Deane, 169.

than needlessly contend for the coat, though taken away without order. A little chimney is soon fired; so was the Plymouth Captain, a man of very little stature, yet of very hot and angry temper. The fire of his passion soon kindled and blown up into a flame by hot words, might easily have consumed all, had it not been seasonably quenched."⁹ The conduct of Standish, instead of being reprehensible, appears to have been, on the whole, remarkably forbearing.

Hubbard also speaks in rather contemptuous terms of the Plymouth title to Cape Ann as "a useless Patent."¹⁰ It was the only legal basis that the Cape Ann colony ever had, but it is truly remarkable that the Dorchester intruders should have asserted the right of defence, which the patent gave the Plymouth people and their associates, against the real owners of the soil and have finally expelled them together. This was the virtual conclusion of the whole matter: the Plymouth people went off to the Kennebec in 1625,¹¹ and the Dorchester men remained in possession of Cape Ann. There was more

⁹ Hubbard, 110-11. Cf. Bradford, 196.

¹⁰ Hubbard, 110.

¹¹ In the latter part of the above year the Plymouth people sent a boat-load of Indian corn up the Kennebec river, and brought home 700 lbs. of beaver skins, besides other peltry. Bradford, 204.

In the year 1627, Plymouth colony sent Mr. Allerton to England with "what beaver they could spare to pay some of their ingagements, & to defray his charges; *for those deepe interests still kepte them low.* Also he had order to procure a patente for a fitt trading place in ye river of Kenebeck; for being emulated both by the planters at Piscataway & other places to ye eastward of them, and allso by ye fishing ships, which used to draw much profite from ye Indeans of those parts, they [the Plymouth people] *threatened to procure a grante, & shutte them out from thence*: espetially after they saw them so well furnished with commodities, as to carie the trade from them [Plymouth]. They thought it but needful to prevente such a thing, at least they might not be excluded from free trade ther, wher them selves had first begune and discovered the same, and brought it to so good effecte." We perceive by this extract from Bradford's History (221-2) that the Pilgrim Fathers were wise in their own generation. With the Kennebec trading-post in mind, Messrs. Bradford, Standish, Allerton, Winslow, Brewster, Howland, Alden, and Prince hired the trade of Plymouth colony for a term of six years, assumed all the debts of the corporation, bought off the Merchant Adventurers (retaining the aid of a few of the more honorable capitalists), and thus placed the affairs of New Plymouth upon a good business foundation. Bradford, 226-32.

method in the above seizure of the Plymouth staging than would appear from Hubbard's account. It seems from Bradford's version of the affair that certain of the merchant adventurers, who had fitted out the Plymouth colony, were now trying to dislodge them from their fishing station. Already factions had arisen among the English company, and "some of Lyfords & Oldoms friends, and their adherents, set out a shipe on fishing, on their owne accounte, and getting ye starte of ye ships [of Plymouth] that came to the plantation, they tooke away their stage, & other necessary provisions that they had made for fishing at Cap-Anne ye year before, at their great charge, and would not restore ye same, excepte they would fight for it."¹²

The first foundation of Massachusetts was for the same end as the first occupation of the islands of Venice, namely, for fishery. There is a more general truth than is usually imagined in the story told in Cotton Mather's *Magnalia* of the Puritan minister who once ventured to address a congregation of fishermen at Marblehead. He was exhorting them to be a religious people, otherwise, he said, you will contradict the main end of planting this wilderness. "Sir," said one of the fishermen, "you are mistaken. You think you are preaching to the people at the Bay. Our main end was to catch fish!"¹³ Without doubt, both Pilgrims and Puritans had religious motives in coming to America, but they had also secular motives. As English colonists under English law, they came to plant civil as well as religious society, and they distinguished more sharply between things civil and ecclesiastical than is commonly supposed. Moreover, the investment of English capital in the colonial enterprise of both Pil-

¹² Bradford, 196. Cf. 169, note.

¹³ Young, *Chronicles of Mass.*, 6.

grims and Puritans cannot be explained upon religious grounds. The prospective fur-trade and fisheries procured financial support for Plymouth and Massachusetts. When Pilgrim agents were soliciting King James for a colonial patent, he inquired what profits might arise. "Fishing," they replied laconically. "So God have my soul," said the King, "'tis an honest trade; 'twas the Apostles' own calling."¹⁴ But fishing never proved very profitable to Plymouth in early times. The Pilgrims had such constant bad luck that it became proverbial, "a thing fatal."¹⁵ Bradford said they "had allway lost by fishing."¹⁶ Their chief business success lay in trading wampum and Indian corn for beaver-skins and other peltry. On the other hand, not merely the material support but the original motive for the Cape Ann Colony, which was the first foundation of Massachusetts, lay chiefly in the fisheries. "During the whole lustre of years, from 1625," says Hubbard, "there was little matter of moment acted in the Massachusetts, till the year 1629, after the obtaining the Patent; the former years being spent in fishing and trading by the agents of the Dorchester merchants, and some others of West Country."¹⁷ Long previous to 1625 "the foresaid merchants . . . yearly sent their ships thither"¹⁸ to Cape Ann for purposes of fishing. The idea of a permanent plantation there was suggested by the prosperity of Plymouth, but the plantation was to be mainly in aid¹⁹ of the fisheries. Fishing continued to be and has always been the chief interest at Cape Ann. It was for the possession of this vantage ground that the Pilgrims and Dorchester employés were rivals.

The planters of Cape Ann, who professed themselves

¹⁴ Young's *Chronicles of the Pilgrims*, 383. ¹⁵ Bradford, 168. ¹⁶ *Ibid*, 262.

¹⁷ Hubbard, 110. ¹⁸ *Ibid*, 106.

¹⁹ White, *Planter's Plea*, in Young's *Chron. of Mass.*, 5-6.

"servants of the Dorchester Company"²⁰ were by no means irreligious men. They leaned, however, more toward the Church of England than toward the Separatism of Plymouth. Hubbard says "the Adventurers, hearing of some religious and well-affected persons, that were lately removed out of New Plymouth, out of dislike of their principles of rigid Separation (of which number Mr. Roger Conant was one, a religious, sober, and prudent gentleman . . .) they pitched upon him for the managing and government of all their affairs at Cape Anne. . . . Together with him, likewise, they invited Mr. Lyford, lately dismissed from Plymouth, to be the minister of the place; and Mr. Oldham, also discharged on the like account from Plymouth, was invited to trade for them with the Indians. All these three at that time had their dwelling at Nantasket. Mr. Lyford accepted, and came along with Mr. Conant. Mr. Oldham liked better to stay where he was for awhile, and trade for himself, and not become liable to give an account of his gain or loss. But after a year's experience, the Adventurers, perceiving their design not like to answer their expectation, at least as to any present advantage, threw all up; yet were so civil to those that were employed under them, as to pay them all their wages, and proffered to transport them back whence they came, if so they desired."²¹

The Cape Ann experiment thus proved a failure for the Dorchester merchants, as it had done for the Pilgrim fathers. It would obviously be quite as unfair to ascribe to base and material motives the failure of the merchants in planting a sterile shore as it would to ascribe to spiritual considerations the failure of the Pilgrims in fishing a barren sea. The Dorchester merchants appear to have

²⁰ Thornton, *Landing at Cape Anne*, 58, 59; see depositions of Woodbury and Brackenbury.

²¹ Hubbard, 106-7.

been very honorable and generous men. The Reverend John White, whom Hubbard calls "one of the chief founders of the Massachusetts Colony,"²² was associated with them as a stock-owner (as he probably had been with the capitalists who fitted out the Plymouth Colony²³) although, as Wood tells us, he "conformed to the ceremonies of the Church of England."²⁴ The explanation of the failure of the Cape Ann enterprise is not to be sought in the character of the men, for a better set of colonists never trod the shores of the New World than the Old Planters²⁵ who left the unproductive Cape and founded the town of Salem. The plain fact is that the spot originally chosen was a poor one for a new plantation. Roger Conant never liked the place, and soon began to make inquiries for one more commodious, which he found a little southwestward from Cape Ann, upon the further side of a creek called Naumkeag. Cape Ann was consequently abandoned, but it was the stepping-stone to Salem.

²²*Ibid.*, 107.

²³ Bradford's Letter Book, Collections of Mass. Hist. Soc., 1st series, iii, 48, for list of Plymouth adventurers. Cf. Bradford's History, note by the editor, 213.

²⁴ Young's Chronicles of Mass., 26, note.

²⁵ The best account of the antecedents and belongings of the Old Planters of Salem may be found in George D. Phippen's article upon this subject in the Hist. Coll. of the Essex Institute, i, 97 *et seq.* Thornton's Landing at Cape Anne is also a pioneer effort in this interesting field of Massachusetts beginnings. The student of Hubbard would naturally infer that only four or five men removed with Roger Conant from Cape Ann to Naumkeag, but Mr. Phippen shows that there were more than a dozen emigrants. He gives the following list; Roger Conant (governor), John Lyford (minister), John Woodbury (who became the first constable of Salem), Humphrey Woodbury, John Balch (ancestor of the Beverly Balches), Peter Palfrey (progenitor of the historian of New England), Capt. Traske (ancestor of W. B. Traske of Dorchester, who lately transcribed the Suffolk Deeds), William Jeffrey, John Tylly, Thomas Gardner, William Allen, Thomas Gray, Walter Knight, Richard Norman and his son of the same name, which clings yet to the reef of Norman's Woe, where one of the family was lost. Compare Thornton's list (Landing at Cape Anne, 63). Mr. Phippen thinks that, including men, women and children, there must have been, at least, thirty people in the little migration which colonized Salem. The colony at Cape Ann, he conjectures, numbered not far from fifty persons. White, in his Planter's Plea, says, "In building houses the first stones of the foundation are buried underground and are not seen." We shall find the Old Planters very lively stones in the upbuilding of Salem.

II.

ORIGIN

OF

SALEM PLANTATION.

ONE of the proximate causes for the removal of Roger Conant and his associates to the green, inviting meadows of Naumkeag was undoubtedly the desire of obtaining better accommodations for the pasturing of cattle. Some of the colonists had now gone home to England or had resumed their seafaring life; "but a few of the most honest and industrious," as the Reverend John White tells us in his *Planters' Plea*, "resolved to stay behind and take charge of the cattle sent over the year before."¹ Not liking the pastoral facilities of Cape Anne, which White says had been chosen rather on account of its advantages for fishing, the little company of a dozen or more men, who

¹ White, *Planters' Plea*, in *Young's Chronicles of Massachusetts*, 12.

This *Plea* was obviously written in the interests of the colonization as a business. The work is full of financial data, matters of profit and loss in the fisheries and fur-trade, and throws more light upon "the causes moving such as have lately undertaken a plantation in New England" than any existing documentary evidence, apart from the original records of the Massachusetts Company.

now remained, transported themselves with their families and cattle, to Naumkeag, where they found fresh fields and pastures new. A common for pasture was Salem, therefore, in its historic origin, and a common for historical browsing does Salem yet remain.

Another occasion for the original occupation of Naumkeag was the excellent opportunity here presented for raising Indian corn. We are told by an almost contemporary historian, who probably obtained his information from Roger Conant himself, that Naumkeag "afforded a considerable quantity of planting land, Here," continues Hubbard in his narrative, "they took up their station upon a pleasant and fruitful neck of land, environed with an arm of the sea on each side."² It appears that the place was to a considerable extent, an open tract of country. It was certainly the inviting meadow and the "quantity of planting land" which attracted the attention of the first explorers. Here they found, already cleared for their use, what the ancient Germans would have termed a Mark. Here lay the *camporum spatia*,³ the wide-extending open spaces, in which, according to Tacitus, the Germans found division of land an easy matter. There can be little doubt that the first settlers of Naumkeag found here as good an opening as did many German villages in the Black Forest or the Odenwald. The Reverend Francis Higginson, in his *New England's Plantation*, says, "Though all the country be, as it were, a thick wood for the general, yet in divers places, there is much ground cleared by the Indians, and especially about the Plantation [Naumkeag]; and I am told that about three miles from us a man may stand on a little hilly place and see divers thou-

² Young's Chron. of Mass., 21.

³ Tacitus, Germania, Cap. 26.

sands of acres of ground as good as need to be, and not a tree in the same."⁴

It is one of the most interesting facts connected with the plantation of many New England towns that they were built upon open spaces formerly cultivated by the Indians. Plymouth was planted, not under "the rocking pines of the forest" but in an old Indian corn-field, probably near the site of some ancient Indian village, which had been devastated by the pestilence that swept off so many Indian tribes before the English came over. The Pilgrim record says, "we came to a conclusion by most voices, to set on the main land, . . upon a high ground, where there is a great deal of land cleared, and hath been planted with corn three or four years ago."⁵ Although there is no such original record of the planters of Naumkeag, yet doubtless it was by some such informal vote, by the agreement of the greatest number, that Roger Conant and his little company determined to occupy this "pleasant and fruitful neck of land." So pleasant, in fact, and at the same time so ancient did the Puritan clergy afterward consider this old Indian locality, that some of the more learned

⁴ Francis Higginson, *New England's Plantation* (Young, 244).

Thomas Graves, also, a professional engineer and surveyor, who came over with Higginson, to lay out towns and investigate the resources of the country, its mines, minerals, salt springs, etc., confirms the above testimony. Graves had been a great "traveller in divers foreign parts," but says, "Thus much I can affirm in general, that I never came in a more goodly country in all my life, all things considered. If it hath not at any time been manured and husbanded, yet it is very beautiful in open lands mixed with goodly woods, and again open plains, in some places five hundred acres, some places more, some less, not much troublesome for to clear for the plough to go in; no place barren but on the tops of the hills. The grass and weeds grow up to a man's face in the lowlands, and by fresh rivers abundance of grass and large meadows, without any tree or shrub to hinder the scythe." Graves says that, for cattle, corn, and grapes, he never saw any such land, except in Germany and Hungary, to which latter country he is always inclined to liken New England. See Young, 264. For an interesting note on Thomas Graves, see Young, 152.

⁵ Mourt's Relation, or the Journal of Bradford and Winslow, in Young's *Chronicles of the Pilgrims*, 124, 167, 206, 229; Young's *Chron. of Mass.* 244.

divines were disposed to identify Naumkeag with the Hebrew Nahumkeike, signifying by interpretation, the "bosom of consolation," or, as Cotton Mather said, a "haven of comfort."⁶ And Francis Higginson, who, with "a company of honest planters," joined the original settlers, called the place Salem from the Peace,⁷ which they found here; although, according to another account, there arose some little jealousy between the old and new comers, which was finally allayed, the new Hebrew name then replacing the old by common consent to commemorate the establishment of an era of good feeling among neighbors.⁸ But without laying stress upon pious etymologies, or upon the theory that Salem was once the abode of the lost tribes of Israel, we may safely say that the discouraged fishermen from Cape Ann found here a tolerably attractive opening in what has been called "an immeasurable expanse of lofty forests shrouded in the sable gloom of ages."⁹ We may also rest assured that the Puritans, wandering away from their mother country and mother church, sought and found here upon this beautiful neck of Indian land, within the arms of the sea, that peace which the exiled Dante¹⁰ found only in his grave.

The forest clearing originally occupied by the planters

⁶ Mather, *Magnalia*, i, 328.

⁷ Higginson's Journal in Young's *Chron. of Mass.*, 21.

⁸ Young, *Chron. of Mass.*, 12, 21, 31, 145. The name of Concord, N. H., was thus chosen to commemorate the establishment of peace between two rival jurisdictions.

⁹ Drake, *History and Antiquities of Boston*, 56 (a passage concerning the condition of the country about Conant's plantation).

¹⁰ Dante's *Divine Comedy*, *Inferno*. Longfellow's *Illustrations*, Letter of Frate Ilario: "Hitherto he came, passing through the diocese of Luni, moved either by the religion of the place, or by some other feeling. And seeing him, as yet unknown to me and to all my brethren, I questioned him of his wishings and his seekings there. He moved not; but stood silently contemplating the columns and arches of the cloister. And again I asked him what he wished, and whom he sought. Then, slowly turning his head, and looking at the friars and at me, he answered: 'Peace.'"

of Naumkeag was held by them in virtual commonage. They were acting as representatives of the Dorchester Company, which had sent over the very cattle that the colonists were now trying to preserve in the interest of their patrons. For the encouragement of these faithful men and as an earnest of future aid toward the establishment of a permanent plantation, the Dorchester merchants who had now combined with some London capitalists, sent over in 1626 twenty-four additional kine.¹¹ These also must have been pastured as a common herd together with the creatures sent over in 1625. A common of pasturage, therefore, was the open country about Salem from the very beginning. There is some reason for believing that planting ground was taken up by the white settlers in common with the Indians. In the deposition made by William Dixy, of Beverly, in 1680, to confirm Salem's Indian land titles, occurs the following interesting testimony: "I came to New England and arrived in June 1620 at Cape Ann, where we found the signs of buildings and plantation work, and saw no English people, so we sailed to the place now called Salem, where we found Mr. John Endecott, Governor and sundry inhabitants besides: some of whom ^{s^d} they had been servants to the Dorchester company: & had built at Cape Ann sundry years before we came over,—when we came to dwell heard the Indians bid us welcome and shewed themselves very glad that we came to dwell among them, and I understood they had kindly entertained the English ^{y^t} came hither before we came, *and the English and the Indians had a field in common fenced in together.*"¹² There is sufficient evidence of the friendly relations existing between

¹¹ White, Planter's Plea, in Young's Chron. of Mass., 12.

¹² Thornton, Landing at Cape Anne, 81. Compare the depositions of other old settlers, given in Thornton's appendix, in regard to the title from the Indians, also the Indian deed of lands.

the early settlers and the natives, and of the fact that both planted side by side. Nowhere else in Massachusetts, save in the town of Stockbridge, have we as yet found more delightful tokens of a recognized community of village interests between the white and red men than in the peaceful town of Salem, the Indian Naumkeag.

In Stockbridge, Indians not only owned lands¹³ in common with the whites, but shared in the town offices, voted in town meeting, and communed with their pale faced brethren in the church. The Naumkeag Indians were also kindly treated by the white settlers and frequently paid them friendly visits, as did the Stockbridge Indians¹⁴ to their friends after withdrawing from their old village-home.

The Reverend John White had promised Roger Conant by letter that, if he had a few other faithful men would hold fast and not desert the business of the plantation, a regular patent should be procured and "whatever they should write for, either men, or provision, or goods wherewith to trade with the Indians"¹⁵ should be sent over. Hubbard says Mr. White was prompted to make this offer because some intimation had come from Roger Conant that the region of Salem "might prove a receptacle for such as upon the account of religion would be willing to begin a foreign Plantation in this part of the world."¹⁶ This

¹³ The Anglo-Indian land community at Montauk, Easthampton, Long Island, is perhaps the most remarkable case that has survived until a recent date. The subject has been investigated by Mr. J. F. Jameson, a Fellow of the Johns Hopkins University. *Mag. of Amer. Hist.*, April, 1883.

¹⁴ The history of the Stockbridge Indians is under investigation by the writer in connection with the Evolution of Village Improvement in the mission town of Stockbridge.

¹⁵ Hubbard, 108. A fur trade with the natives was one of the economic foundations of Massachusetts as well as of Plymouth, see Hubbard, 110, and Higginson, in Young's *Chron. of Mass.* Roger Conant was an especially enterprising fur-trader. In 1631, he and Peter Palfrey, and others, formed a Company "for traffic in furs, with a truck house at the eastward," or as we should now say, "down in Maine," see *Hist. Coll. Essex Inst.*, i, 102.

¹⁶ *Ibid.*, 107.

may have been Roger Conant's thought, but it is more likely that it was good Mr. Hubbard's pious reflection, for, at the time of the alleged communication, Roger Conant was a Church of England man; Lyford, the minister of Naumkeag, was warmly devoted to the interests of the established church, as his Plymouth career would show; the Reverend John White himself was at no time in his life more than a very moderate Puritan, for he is said to have conformed to the ceremonies of the established Church and he held church livings in England until the end of his days. Mr. White was a very philanthropic, learned, and orthodox divine. He was one of the Assembly which framed the Westminster catechism and was highly respected by the Puritan party, but he was no extremist or Puritan propagandist.¹⁷ In his *Planter's Plea*, he tells the plain, unvarnished truth about the colonial establishment of Massachusetts. He says some of the adventurers desired to continue their attempt at a plantation; that they sent over more cattle to encourage the old planters and to attract others; they conferred with some gentlemen of London and persuaded them to take stock in the enterprise. "The business came to agitation afresh." Some approved it and others dissuaded. The matter was common talk in London and was soon noised abroad. Some men became so much interested in the project that they promised "the help of their purses if fit men might be procured to go over." Upon inquiry, John Endicott and other good men were found, who were willing to go to New England and carry on the work of "erecting a new Colony upon the old foundation." Money was subscribed; a patent was secured; and Endicott, with a few men, was sent over to Naumkeag, where he arrived in September, 1628, "and uniting his own men with those

¹⁷ Young's Chron. of Mass., 26.

which were formerly planted in the country into one body, they made up in all not much above fifty or sixty persons." From another source of information, it appears that, later in the year, a small band of servants was sent over by the Massachusetts Company, which was now forming.

The Planter's Plea gives us the *raison d'être* of this enterprising and excellent Company. The safe arrival of Endicott's party and the favorable reports he sent back to England encouraged other capitalists to join the enterprise, and, "all engaging themselves more deeply," the next year about three hundred more colonists, "*most servants*," were sent over with some horses and sixty or seventy "rother-beasts"¹⁸ (*i. e.*, cows and oxen, from Saxon *hrudher*, Old German *hrind*). The widening fame of Endicott's good government and of the success of the colony "began to awaken the spirits of some persons of competent estates, not formerly engaged." Being "without any useful employment at home" and thinking to be serviceable in planting a colony in New England, such men, of whom doubtless John Winthrop, Matthew Cradock, Sir Richard Saltonstall, Isaac Johnson, and Thomas Dudley are good types, joined the Massachusetts Company, probably with some remote intention of going out to America,—just as Englishmen now go out to India or Australia. We may add in passing that Matthew Cradock, the first governor of the Company and the predecessor of Winthrop, never came to America at all, but he sent out many servants who started for him a plantation of 2500 acres on the Mystick River (Medford) and impaled for him a deer-park: he had his own business-agent in Massachusetts and invested capital in ship-building, in the fisheries and in

¹⁸ In the Statutes of the Realm, 3 and 4 Edw. vi., we have found "An Act for the buyinge of Rother Beasts and Cattell."

the fur-trade.¹⁹ Mr. White says that other people, "seeing such men of good estates" engaged in the enterprise, some out of attachment to these parties and "others upon other respects" (presumably religious grounds), united with them. Thus the Company was formed and a competent number of persons were secured to embark for New England.

Ministers were provided by the Company as a matter of course. Even the Dorchester merchants hired a minister. Messrs. Bright (who was devoted to the established church), Higginson, and Skelton (who were Puritans still in the Church) went out to New England, not as voluntary missionaries, but upon very good contracts for those times, before men were passing rich on £40 a year. Higginson was to have £30 for his outfit, £10 for books, free transport to New England, a house, glebe-lands and fire-wood, the milk of two cows, and £30 a year for three years, at the end of which time "if he shall not like to continue," he was to have free passage home. Provision was made for his wife and children, in case he should die. It is very curious to note in the records of the Massachusetts Company, the items there entered for the outfit of the colony: Ministers, men skilful in making pitch and salt, vine planters,²⁰ patent under seal, wheat, rye, barley, oats, stones of all sorts of fruit, potatoes, hop-roots, hemp, flax, tame turkeys, linen and woollen cloth, pewter bottles, pint and quart measures, brass ladles, spoons, kettles,

¹⁹ Young's Chron. of Mass., 137.

²⁰ Endicott wanted "Frenchmen—experienced in planting vines." The Company, in a letter to the Governor, said they had made diligent inquiry, but could not get hold of any of that nation. "Nevertheless," they say, "God hath not left us altogether unprovided of a man [Mr. Graves] able to undertake that work," *i. e.*, labor in the vineyards of the Mass. Co. Governor Endicott planted a vineyard of his own in Salem. Governor Winthrop agreed to plant a vineyard upon so-called Conant's Island, afterwards the Governor's Garden or Governor's Island, the yearly rent of which was to be a hogshead of the best wyne that shall grow there," payment to begin after the death of the Governor! (Mass. Col. Rec., i, 94, 139; cf. Young's Chron. of Mass., 152).

arms and apparel for 100 men, 45 tuns of beer, and *six tuns of water*, 20 gallons of Spanish wine, 20 gallons of aqua vitæ and 20 gallons of oil²¹—this for one ship with a hundred passengers!

When Higginson and three ship loads of emigrants reached Naumkeag in June, 1629, there were found living under Endicott's government about one hundred planters. "We brought with us," says Higginson, who does not count *servants*,²² "about two hundred passengers and planters more, which, by common consent of the old planters, were all combined together into one body politic, under the same Governor. There are in all of us, both old and new planters, about three hundred, whereof two hundred of them are settled at Nehumkek now called Salem, and the rest have planted themselves at Masathulets Bay, beginning to build a town there, which we do call Cherton or Charles town. We that are settled at Salem make what haste we can to build houses, so that within a short time we shall have a fair town."²³ This account was written before the end of September, 1629, so that it appears the town-life of the Massachusetts colony was already beginning to bud and blossom in the wilderness.

The appearance of Salem at the time of Higginson's arrival is pleasantly described by that entertaining divine,

²¹ Mass. Col. Records, i, 23-7.

²² Barry, *History of Mass.*, i, 165. Barry thinks there were one hundred and eighty servants sent over to Salem.

²³ "New England's Plantation, Or a Short and True Description of the Commodities and Discommodities of that Countrey, written by Mr. Higgeson, a reverend Diuine there resident. Whereunto is added a Letter, sent by Mr. Graues, an Enginere, out of New-England. The third Edition, enlarged!" (See Young's *Chron. of Mass.*, 258-9). The publisher, in a prefatory note, says the work was "not intended for the press." "It was written by a reverend divine now there living, who only sent it to some friends here which were desirous of his Relations." Possibly the letter of Mr. Graves, the professional engineer, who was employed by the Company, was also not intended for publication, but his brief report and Higginson's long and highly interesting account of the plantation quickly found their way into print. Higginson's glowing sketch went through three editions in a single year, showing a marked public interest in the fortunes of the Massachusetts colony.

who though perhaps a trifle inclined to view the colonial fields of Massachusetts through benignant glasses, can be safely followed in local matters which he must have regarded with tolerably clear vision. "When he came first to Nehumkek," he says very simply, "we found about half a score houses, and a fair house newly built for the Governor." The Governor had a garden with a lot of green pease growing in it, as good as were ever seen in England. There were also in the plantation plenty of turnips, parsnips, carrots, pumpkins, and cucumbers. The Governor had planted a vineyard with great hope of increase. An abundance of corn was growing. The planters hoped that year to harvest more than a hundred fold. Higginson says it is almost incredible what great crops of Indian corn the planters have raised. One man told him that from the setting of thirteen gallons of corn he had had an increase of fifty-two hogsheads, every hogshead holding seven bushels, London measure, and every bushel had been sold to the Indians for an amount of beaver skins equivalent to eighteen shillings. Thus, from thirteen gallons of corn, worth six shillings, eight pence, reckons the good minister, a single farmer made in one year about £327, or over \$1,500. We must make allowance for good-natured ministerial arithmetic and for the use of a very large sized fish as fertilizer in every hill of the old planters' corn, but we may, with probable truth, picture to ourselves a tolerably flourishing plantation made up of individual gardens and home-lots. We know that the old planters took up lands for themselves from the fact that Governor Endicott was instructed by the Massachusetts Company in the spring of 1629, to allow the first comers to keep "those lands w^{ch} formerly they have manured;"²⁴ and the above account of the success of one planter would indicate that at least the

²⁴ Mass. Coll. Rec., i, 388.

arable lands were occupied in severalty. Higginson gives us to understand that even servants were to enjoy each the use of fifty acres. Some intimation, thereupon, of the plan proposed by the Massachusetts Company, May 19, 1629 (whereby each adventurer in the common stock was to have fifty acres for every member of his family and for every servant transported)²⁵ appears already to have reached the plantation. There was land enough for all. "Great pity it is," says Higginson, "to see so much good ground for corn and for grass as any is under the heavens, to lie altogether unoccupied, when so many honest men and their families in Old England, through the populousness thereof, do make very hard shift to live one by the other." The Indians do not object to the coming and planting of the English here, because there is an abundance of ground which the Indians can neither use nor possess. This land, he asserts, is fitted "for pasture or for plough or meadow ground." As for wood, a poor servant may have more timber and fuel than could many a nobleman in England. Nay, all Europe could not afford to make so great fires as New England. And as for fresh water, he continues, the country is full of dainty springs, and some great rivers, and some lesser brooks. Near Salem we have as fine clear water as we could desire, and we can dig wells and find water wherever we please.²⁶

Higginson's account of the attractions of Salem is to some extent confirmed by William Wood, who came over to this country with Higginson, for a tour of observation, and wrote a very good description of the Massachusetts towns that were planted before his return to England in August, 1633. Wood's account of Salem is not quite so flattering to local pride, but it enables the reader to obtain a very matter-of-fact picture, entirely free from any

²⁵ *Ibid.*, 43.

²⁶ Higginson, *New England's Plantation* (in *Young's Chron. of Mass.*, 242-64).

suspicion of *couleur de rose*. "Four miles north-east from Saugus," says Wood, "lieth Salem, which stands on the middle of a neck of land very pleasantly, having a South river on the one side, and a North river on the other side. Upon this neck, where the most of the houses stand, is very bad and sandy ground. Yet, for seven years together, it hath brought forth exceeding good corn, by being *fished* but every third year. In some places is very good ground, and very good timber, and divers springs hard by the sea-side. Here, likewise, is store of fish, as basses, eels, lobsters, clams, &c. Although their land be none of the best, yet beyond those rivers is a very good soil, where they have taken farms, and get their hay, and plant their corn. There they cross these rivers with small canoes, which are made of whole pine trees, being about two foot and a half over, and twenty foot long. In these likewise they go a fowling, sometimes two leagues to sea. There be more canoes²⁷ in this town, than in all the whole Patent; every household having a water-horse or two. The town wants an alewife river, which is a great inconvenience. It hath two good harbours, the one being called Winter, and the other Summer harbour, which lieth within Derby's fort; which place, if it were well fortified, might keep ships from landing of forces in any of these two places."²⁸

In this sketch of primitive Salem we see foreshadowed a rising city by the sea. These rude gondolas plying across the rivers and up and down the harbor represent for a simple agrarian folk that same in-dwelling maritime spirit which gradually transformed the rude fisherman of the Adriatic lagoons into merchant princes, trading with the Eastern Empire as the merchants of Salem were destined to trade with the farthest Orient. The beginning

²⁷ In 1636, Roger Conant was on the committee for inspecting the canoes of Salem.

²⁸ William Wood, *New England's Prospect*, in *Young's Chron. of Mass.*, 409-10.

of Salem's foreign trade was precisely like that of Venice, namely, furnishing salt fish to Catholic countries, a trade which developed into the import of silks and spices of the Orient. In a recent poem by a son of Salem, who looks back upon the first settlement of this place through the field-glass of History, the bard exclaims

Yonder we see from the North River shore
The farmers of the region paddling o'er!²⁹

And the poet-sculptor Story, living under dreamy Italian skies, has sung of Salem his native town.

Ah me, how many an autumn day
We watched with palpitating breast
Some stately ship, from India or Cathay,
Laden with spicy odours from the East,
Come sailing up the bay!³⁰

²⁹ From a poem by the Rev. Charles T. Brooks, at the Celebration of the Two Hundred and Fiftieth Anniversary of the Landing of Endicott, Historical Collections of the Essex Institute, xv, 212.

³⁰ From an ode by William W. Story, on the above occasion, *ibid*, 236.

The Visitor's Guide to Salem (H. P. Ives, 1880) says, page 6, "Salem has had a most remarkable commercial record. In 1825 there were one hundred and ninety-eight vessels owned in Salem. In 1833 there were one hundred and eleven engaged in foreign trade. Salem 'led the way from New England round the Cape of Good Hope to the Isle of France, and India and China. Her vessels were the first from this country to display the American flag and open trade with St. Petersburg, and Zanzibar, and Sumatra; with Calcutta and Bombay; with Batavia and Arabia; with Madagascar and Australia.'"

The Rev. Charles T. Brooks has put into verse a story familiar to Salem people of the grandeur of this city as viewed in the imagination of the Orient.

Some native merchant of the East, they say,
(Whether Canton, Calcutta or Bombay),
Had in his counting-room a map, whereon
Across the field in capitals was drawn
The name of Salem, meant to represent
That Salem was the Western Continent,
While in an upper corner was put down
A dot named Boston, SALEM'S leading town.

Ibid, 213.

On the subject of Salem's oriental trade, see article by Robert S. Rantoul, on "Old Channels of Trade," in the Bulletin of the Essex Inst., ii, 145-154; and "The port of Salem," by the same writer, Hist. Coll. Essex Inst., x, pp. 52-72, and G. F. Cheever's "Remarks on the Commerce of Salem, 1626-1740," in the Hist. Coll. of Essex Inst., i, 67, 77, 117; also, see "Life of Elias Hasket Derby," Freeman Hunt's "Lives of American merchants, New York, 1858," vol. ii, pp. 17-100, and "Historical Sketch of Salem," by Osgood and Batchelder, Institute Press, 1879, chap. viii, p. 126-227, and a letter of Robert S. Rantoul to the National Board of Health, Salem, March, 1882, on the "Early Quarantine Arrangements of Salem," Essex Inst. Bulletin, vol. xiv, pp. 1-56.

III.

ALLOTMENTS OF LAND IN SALEM TO MEN, WOMEN, AND MAIDS.

THE situation of the original house-lots of the Old Planters of Salem has been the subject of careful investigation and some friendly controversy among local antiquaries and historians. It is interesting to trace the development of correct views from earlier but erroneous opinions. The Reverend William Bentley, in his *Description and History of Salem*, published by the Massachusetts Historical Society in 1800, says, "when Francis Higginson arrived in 1629, there were only six houses, besides that of Governor Endicott, and *these were not on the land now called Salem.*"¹ What authority Mr. Bentley had for this latter statement does not appear in his monograph. Probably he had in mind some local tradition connected with the locality of the Old Planters' Common Meadow, which of course lay without the village. Following upon Mr. Bentley's track, in 1835, came Robert Rantoul, sr., with his *Memoranda of Beverly*, published by the Massachusetts Historical Society, wherein he states very positively, "Roger Conant, John Woodberry and Peter Palfry first settled in 1626, on the neck of land between Collin's Cove on the south, and the North river on the north, in Salem. Bridge Street, leading from the compact part of Salem to Essex (Beverly) Bridge, runs over this neck of land. Their first houses were near the margin of the river, and their lots running from the river across the neck to Collin's Cove."² This firmly planted opinion seems to have

¹ Collections of the Mass. Hist. Soc., 1st Series, vi, 231.

² *Ibid.*, 3d Series, vii, 254. Also Hist. Coll. Essex Inst., xviii, 307-8.

held its ground in Salem until a very recent date. Even Mr. Phippen, in his admirable sketch of the Old Planters, accepted the traditional notion, with certain modifications, suggestive of the real truth. He says, "The Old Planters appear to have occupied the larger part of the peninsula lying between the North River and Collin's Cove; and *they may not have been strangers to that larger peninsula beyond, which afterwards became the centre of the town.*"³

In 1859 came the full development and substantiation of this latter view by Mr. William P. Upham, who made a most thorough examination of old deeds and land titles and established the position, now cordially accepted by Mr. Phippen,⁴ that "the old Planters occupied that portion of our territory which has ever remained the nucleus and central body of the town."⁵ Mr. Upham in a series of articles on the First Houses in Salem, published in the Bulletin of the Essex Institute, gives most conclusive proof⁶ of this assertion. His results may be summed up in the following statement: "The manner in which the house lots in the central part of the town were originally laid out, seems to indicate that the earliest settlement was made in the vicinity of Elm street and Washington street upon the South river. Between these streets the lots were small, irregular, and not in conformity with the plan upon which the rest of the town was laid out. East of there, all along the South river to the Neck, house-lots were laid out running back from the river; and along the North river, west of North street were larger house-lots, also running back from that river. Essex street was probably a way that came gradually into use along the ends of these lots; and as they were all of the same depth from the river

³ Hist. Coll. of the Essex Institute, i, 103.

⁴ Bulletin of the Essex Institute, i, 51.

⁵ *Ibid*, i, 51.

⁶ See especially ii, 33-36, 49-52. These articles extend through two volumes of the Bulletin, i, 37, 53, 73, 129 and 145, *et seq.* ii, 35, 49.

this street acquired, and has retained the same curves that the rivers originally had.”⁷ Mr. Upham is inclined to believe that the Old Planters did not all live closely together, but were somewhat scattered, each man having his separate house-lot and lands. Mr. Upham has completely overthrown the ancient tradition that the Old Planters “settled upon the comparatively small peninsula lying between Naumkeag, now North River, and Shallop or Collin’s Cove,” where Mr. Phippen supposed “Conant and some of his followers built their first small and unsubstantial cottages.”⁸ This latter view probably arose from the popular misconception that the Old Planters’ houses must necessarily have been upon their Common Meadow. Mr. Upham thinks the land in that vicinity was not occupied for building purposes until nearly ten years after the original settlement of Naumkeag, that is, until after Beverly and Ipswich were planted.

The historical reconstruction of the ground plan of New England Village Communities is one of the most important subjects which can occupy the local antiquary. The situation of the original house-lots, the first laying out of streets and lanes, the names of village localities, the transfers of real estate, the perpetuation of ancient landmarks which our fathers have set, the first site of churches and burying grounds, the lines of old forts and of village stockades (from which historical idea of a place *hedged-in*, the Town itself—from *Tun*, *Zun*, *Zaun* or hedge—actually

⁷ *Ibid*, ii, 52.

⁸ Hist. Coll. of the Essex Inst., i, 197. It is an interesting fact that the framework of the “fair house newly built for the Governor” is still standing in Salem, north corner of Washington and Church streets, but it is still more interesting that this structure, though not the first in Salem, was the original “great Frame House” erected in 1624 at Cape Ann by the Old Planters, but pulled down, brought to Salem, and reconstructed “for Mr. Endecott’s use,” see C. M. Endicott in Hist. Coll. Essex Inst., ii, 39; cf. i, 102, 156. This is probably the oldest material structure in New England, and it is for Salem what “the Common House,” if yet standing, would be for Plymouth.

sprang),—these things are all important in the study of town origins. They are the material foundations upon which the town rests as an abiding institution. Generations of men pass away, but old landmarks remain. It is worth while to clear away the accumulated rubbish of years and to discover the sub-structure of every New England village, just as modern antiquaries have unearthed the oldest walls of Rome. From an original diagram, preserved in the colonial records of Plymouth, we are able to determine with positive certainty the direction of the first street and the exact situation of the first house-lots in the oldest village of New England. Mr. William T. Davis, a noted antiquary of Plymouth, has during the past few years been examining old deeds and local records with a view to writing the history of the real estate of that ancient town. He published some of his materials in the *Plymouth Free Press*, under the title of "Ancient Landmarks."⁹ The city of Boston has published a similar series of monumental studies called the *Gleaner Articles*, first contributed more than twenty-five years ago to the *Boston Daily Transcript* by a learned conveyancer, Nathaniel Bowditch.¹⁰ The studies of Mr. Phippen and Mr. Upham stand in the same fundamental relation to the beginnings of Salem and of the Massachusetts Colony as the studies of Mr. Davis and Mr. Bowditch to the beginnings of Plymouth and Boston. Such good works ought to grow from more to more. The territorial history of every town should be not merely written, but pictorially described by means of maps, showing early topography and ancient landmarks.

⁹ In a circular issued Feb. 15, 1882, Mr. Davis proposes to publish his researches in an octavo volume of 600 pages, entitled "Ancient Landmarks of Plymouth."

¹⁰ Fifth Report of the Record Commissioners. Materials for the continuation of such studies are now easily accessible in the volume of Suffolk deeds, transcribed by that eminent antiquary, William B. Trask, a descendant of Capt. Wm. Trask, one of the old Planters of Salem.

The house-lots of ancient Salem, as in all village communities, were quite small, considering the amount of available land in the plantation. In 1637, nearly two years after Mr. Conant had received his grant of two hundred acres in Beverly, it was ordered by the town of Salem, that Mr. Conant's house, with half¹¹ an acre of ground and the corn standing upon the same, should be bought at the town's expense for the use of old Mr. Plase and wife, who should occupy the premises for the rest of their lives. The place was then to revert to the town, which agreed to settle with the executors or assigns of Mr. Plase for whatever improvements he had made upon the ground. Now if Mr. Conant, the leading man of old Naumkeag, had only half an acre for his home-lot, it is fair to presume that his associates possessed at most only half acre homesteads. The idea of a home-lot was a plot of ground sufficient for a dwelling-house and out-buildings, for a door yard and garden, with perhaps a small inclosure for feeding cattle or raising corn. When Higginson arrived in Salem, he noticed at once the Governor's garden, with its growing pease, and other gardens full of vegetables. This type of a house- or home-lot is familiar enough to New England people. We see it everywhere in our country towns and villages, where the houses are built together with any considerable degree of compactness. Tacitus might say of the early settlers of New England as he said of the ancient Germans, *Vicos locant non in nostrum morem conexis et cohaerentibus ædificiis: suam quisque domum spatio circumdat*.¹² At no time in the early history of Salem were town-lots large. They were usually about an acre in extent. In the so-called Book of Grants, which are the oldest records of this town, we read in one place of two acre house-lots, but a page or two later, it appears that

¹¹ Town Records of Salem, i, 55. Cf. 121.

¹² Tacitus Germania, cap. 16.

"the two acre lots were limited to one acre."¹³ Even smaller house-lots than a half acre were sometimes granted; for example, "Augustin Kellham is admitted for inhabitant & is to haue a quarter of an acre before Esties house."¹⁴ Half acre lots were very frequently granted to fishermen at Winter Harbor and to the poor people upon the Town Neck. Many of these small grants were to be held only during the town's pleasure, and were therefore, strictly of the nature of "cottage rights" upon the waste land of an English manor. So-called cottage rights, as we shall further see, became an important criterion in Salem¹⁵ at the beginning of the eighteenth century, for the division of common land. The inhabitants of Marblehead, which formerly belonged to Salem territory, were granted house-lots and nothing more, it being ordered by the town of Salem that "none inhabiting at Marble Head shall haue any other accommodation of land, other than such as is vsually giuen by the Towne to fishermen viz. a howse lott & a garden lott or ground for the placing of their flakes; according to the company belonging to their families, to the greatest family not aboue 2 acres: & the common of the woods neere adioyning for their goates & their cattle."¹⁶ Cottage rights appear to have been granted to the men engaged in the Glass Works, with common in the Glass House Fields.¹⁷

But other lands than house-lots were speedily occupied in the settlement of the town of Salem. Indeed, it is very certain that the Old Planters owned more land than their homesteads. Governor Endicott, as we have seen, was instructed by the Massachusetts Company to confirm Mr. Conant and his men in the possession of lands which they had already improved and to grant them such other lands

¹³ Town records of Salem, i, 9, 11. ¹⁴ *Ibid*, 53.

¹⁵ *Ibid*, 17, 33, 53, 62, 63. Cf. Report of the City Solicitor on the Sale of the Neck Lands, 11.

¹⁶ Town Records of Salem, i, 27-28. The town of Gloucester is built upon the "fisherman's field." See Thornton's Landing at Cape Anne, 83-4.

¹⁷ *Ibid*, 94, 225.

as might seem fitting.¹⁸ And yet we are inclined to think that the Old Planters' farms were very limited in extent until after the grants in Beverly, of which we shall elsewhere speak. In spite of the large stories told to good Mr. Higginson about the enormous crops raised by the Old Planters, we believe that their corn fields were not very different from the type represented by Roger Conant's half acre in 1637. Probably the enterprising Mr. Conant had as much land as any of his associates, yet all that he possessed in the vicinity of the town, in 1637, was something less than forty-four acres, of which presumably a very small proportion was actually under cultivation. At Plymouth an acre of planting ground sufficed for an individual from 1623, when the first distribution of arable land occurred, down to 1627, when the partnership with the London merchants was dissolved and twenty more acres were allotted to each person. The normal amount of planting ground allowed to an individual during the early years of Salem history was ten acres. Almost the first entry in the Book of Grants is in regard to the division of ten acre lots. It was ordered that the least family should have ten acres, but greater families should have more, according to the number of persons in the household.¹⁹ A "10 acre lott and a howse lott"²⁰ were regarded as a proper allowance for the head of a family. Mr. Plase, the blacksmith, who was established in Mr. Conant's old house, with a shop and forge at town expense, petitioned for a "tenne acre lott"²¹ and obtained it. Lieutenant Davenport likewise received a ten acre lot.²² Ten acres were enough for good farming in those days as now. To be sure, many attempts were made to inclose more, but the town authorities resolutely punished all such incroachments. John Pickering, Edmund Giles, Abraham

¹⁸ Mass. Coll. Rec., i, 388.

²⁰ *Ibid*, II.

¹⁹ Salem Town Records of Salem, 8.

²¹ *Ibid*, 50, 121.

²² *Ibid*, 27.

Warren, Major Hathorne, and many others were fined for "taking in of towne common"²³ or inroaching upon the highways. Offenders were obliged to tear down their fences and open again to commons the land which they had inclosed. John Gatsbell was fined ten shillings for building upon town land without leave, but the fine was abated to five shillings on condition that he should cut his long hair!²⁴

It is very pleasant to find that women, who were heads of families, received in early Salem their proportion of planting land.²⁵ Wallace, in his interesting work on Russia, has shown how in the town meeting or village *Mir* of that country, the women have their voice in the matter of distributing communal land, and a very high-keyed voice it is said to be. In Russia the women have not such a delicate consideration for the feelings of the other sex, as used to be shown by Mary Starbuck in the Island of Nantucket, who often addressed town meetings in her husband's name (for he was a bashful man), and always prefaced her remarks by these gracious and winning words: "Mr. Moderator and Fellow townsmen! My husband thinks,"—so and so. To be sure, Russian widows have no husbands, but a tender allusion to the dear departed would certainly be more likely to influence a jury of fellow townsmen than angry vituperation. It is, however, very curious that in Russia the object of feminine anxiety is to have as small an amount of land as possible, for land signifies taxes. Land is actually imposed upon Russian widows if they have sons old enough to engage in farming. In Salem and Plymouth and the towns along Cape Cod, women could not get enough land. Still, in Salem, Tom More's widow drew her ten acres. Mistress Felton, "vidua," and her son Nathaniel received twenty acres. A

²³*Ibid.*, 46, 101, 105, 164, 190, 216.

²⁴*Ibid.*, 55.

²⁵Town Records of Salem, i, 21-27.

very large grant of one hundred and fifty acres was promised Mrs. Higginson, if she should come, but this liberality was because of a special contract made with her late husband by the Massachusetts Company. Widow Mason received twenty acres and Widow Scarlet, thirty. Evidently, the amount of land in both cases was determined by the size of the family.

It is, on the whole, rather disappointing to find that maidens or spinsters did not fare quite so well in the distribution of land as the numerical claims of that class in society would seem to justify. The town fathers of Salem began well by granting so-called "maids lotts," but very soon this course began to be looked upon as highly indiscreet, for, in the records, we find a note in Governor Endicott's own handwriting, to the effect, that, in future, the town desired to avoid "all presedents & evil events of graunting lotts vnto single maidens not disposed of!" Hereafter, "it is ordered that noe single maiden not disposed of in marriage,"—and then follows in the record a painful blank. At this point in his writing the Governor evidently came to a realizing sense of the odious Act he was about to inscribe in the local statutes, and he at once ran his pen through the entire passage. But he did not improve very much upon the phraseology of the law against single maidens by resorting to this expression, "for the avoiding of absurdities!"²⁶ The Governor attempted to refine his language, but he persisted in his cruel purpose. Deborah Holmes was refused land "being a maid," but the Governor endeavored to be kind, for he gave her a bushel of Indian corn! This maiden was evidently of mature years and well content to take care of herself, but the Governor and the Selectmen assured her that it "would be a bad president to keep hous alone."

²⁶ Town Records of Salem, i, 28, 32.

IV.

COMMON FIELDS

IN

SALEM.

THE reproduction of the old English system of Common Fields, or associate ownership of land for tillage and pasture, is a curious chapter in the agrarian history of early New England towns. Nearly all of them had the system to a greater or less extent. The writer has discovered evidence of its general prevalence throughout the Plantations of Plymouth Colony, where to this day there are many remarkable cases of survival, especially upon Cape Cod. But evidence is not lacking of the long continuance of this ancient system upon a large scale in Salem, the oldest of towns in the Colony of Massachusetts Bay. In the year 1640, there were in Salem no less than ten Common Fields of associated proprietors, who fenced more or less in common, under the supervision of fence viewers or surveyors of fences, who were appointed in Town Meeting. There was a special committee for each field. In the course of the seventeenth and eighteenth centuries,

most of these old communal proprietorships were broken up into individual and separate holdings, but the North Fields and the South Fields, which are spoken of as early as 1642-3, continued as Common Fields down to about the middle of the eighteenth century, and are still frequently referred to by citizens of Salem who are conversant with the traditions of the Fathers. The Rev. Charles T. Brooks, in his poem delivered September 18, 1878, at the commemoration of the fifth half century of the landing of Endicott, refers to the ancient Common Fields, so familiar to the early settlers :

"North Fields and South Fields little dreamed that day
Of horse-cars running on an iron way."

In the Rev. William Bentley's "Description of Salem,"¹ published in the year 1800, the old North Fields are spoken of as "the lands lying north of North river" and as containing "four hundred and ninety acres." He speaks of "an hill called Paradise, from the delightful view of the western part of the town." He says that South Fields "are the lands included between Forest and South rivers, and are divided from the great pasture by the Forest-river road. These lands are in good cultivation. Near the town are some settlements; the rest remain in farms and lots, possessed by the inhabitants of the town. The South Fields contain six hundred acres."² Certain parcels of ungranted or unoccupied land in the old North Fields remain common to this day, for example the tract of four or five acres known as "Liberty Hill," now used as a public pleasure ground. A few years ago there was considerable discussion in Salem as to the ownership of such tracts. It was the opinion of a prominent legislator,

¹ Collections of the Massachusetts Hist. Soc., 1st Series, vi, 218.

² *Ibid.*, 217.

Hon. Charles W. Upham, then Mayor, in a report on the Common Lands of the City of Salem in 1852,³ that "Liberty Hill or any other unappropriated lands, if any there be in North Fields, belong to the proprietors of that district by a sort of special commonage, but cannot be disposed of, or appropriated by them, without the consent of the town first had and obtained. This seems to have been the principle upon which the North Field common lands were administered."

This opinion is sustained by the fact that at a Salem town-meeting, March 8, 1684, it was voted that the proprietors of North Fields, or the major part of them, should have liberty to make such orders, from time to time as they should find necessary for the sufficient fencing and well improving of the said fields, and all such orders made by them, relating to the premises, being presented to the Selectmen and approved of by them were to hold good. But the Selectmen had the right of veto, showing that the authority over common fields which were owned by an individual proprietary was still vested in the town.

A local incident in American Revolutionary history, related by Mr. Felt in his *Annals of Salem*, well illustrates the independent spirit which characterized the ancient proprietors of North Fields, an agrarian commonwealth within the larger self-governed community of Salem. When Colonel Leslie, commander of a detachment of British forces, was directing his march towards the "hill called Paradise" in order to seize the artillery which had been hidden there, he found the road through North Fields blocked at a certain bridge, which still belonged to the old proprietors, although the Common Field had been

³Salem City Documents, for year 1852, p. 30. The writer's attention was called to this opinion of the late Hon. Charles W. Upham by Mr. Robert S. Rantoul of Salem.

broken up for more than a quarter of a century. The Colonel remonstrated with the farmers for obstructing the King's highway. "This is not the King's highway," said one of those sturdy yeomen. "This is a private way belonging to the proprietors of North Fields." Graphic accounts of the memorable scene at North Bridge are to be found in the printed speeches of Henry L. Williams, George B. Loring, and Edmund B. Willson, on the occasion of the Centennial Anniversary of Leslie's expedition to Salem, which invasion of local rights occurred February 26, 1775. "This deliberate, open resistance," said Mayor Williams, "by our townsmen to the decrees of the crown took place about seven weeks before the resistance at Lexington and Concord." There is not the shadow of a doubt, if Colonel Leslie, the officer sent from Boston by General Gage to take away the Salem guns, had offered violence to the North Field farmers, that the American Revolution would have flamed out then and there, for the yeomen were armed for battle; the local militia men were prepared, if necessary, to defend the Bridge. "You had better not fire," said John Felt, a plain-spoken townsman who had been remonstrating with Leslie; "you have no right to fire without further orders, and if you do fire you are all dead men. For there," said Felt, pointing to the assembled townsmen, "is a multitude, every man of whom is ready to die in this strife." And Leslie did not fire. Another leading man came forward and expostulated further with Leslie. "And who are you, sir?" demanded the British Colonel. The man replied, "I am Thomas Barnard, a minister of the gospel, and my mission is peace." He had come with his congregation from the old North Church, when the alarm arose that Sunday morning, "The regulars are coming!" The whole town poured out, and nothing but the entreaties of the minister induced them to

lower the draw-bridge and allow Leslie to march over a few rods on condition that he should march straight back again without any further aggressions on proprietary rights. This withdrawal without seizing the guns cost Leslie his commission, but it prevented Salem Common Fields from becoming the first battle ground of the American Revolution.⁴

One summer, a few years ago, in the Bodleian Library of the Essex Institute, at Salem, through the kind offices of Dr. Henry Wheatland and Mr. William P. Upham, there came into the hands of the writer a rare old manuscript. It was not one of the lost books of Livy, neither was it Cicero's missing treatise *De Gloria*, which was lost by Petrarch's poverty-stricken old schoolmaster who was forced to pawn it for bread. The Salem manuscript was no scholar's work. No monk had illuminated its pages; no humanist had revised its text. The Salem manuscript was characterized chiefly by bad writing, bad spelling, and by its general resemblance to the most primitive town records in New England, records kept oftentimes upon old account-books. There was nothing externally attractive about this dingy old manuscript, but it had for the student of New England local history more interest than a beautiful church missal or a classic palimpsest would have afforded, if found in that library of the Essex Institute. For this manuscript was the original record of the Proprietary

⁴Felt, *Annals of Salem*, i, 185. See also a Salem City Document (1875) entitled "Memorial Services at the Centennial Anniversary of Leslie's Expedition to Salem, Sunday, February 26, 1775." See also "Leslie's Retreat" by C. M. Endicott, in *Proceed. Essex Inst.*, i, 89. Also, *Essex Inst. Hist. Coll.*, Vol. xvii, pp. 190-92.

No special mention was made in these Memorial Services held in the North Church, of the proprietors of North Fields and of their Declaration of Independence; and yet this is one of the remarkable assertions of the local spirit which kindled the American Revolution. It was the surviving spirit of an old English agrarian community, an Institution older than the Crown of England, asserting its sovereign, immemorial right to its own property.

of the South Fields in Salem, an old agrarian community, the survival of an institution which was old when the Christian Church and the Roman Empire were young. The system of land community and Common Fields, with small individual allotments held under joint control, as instituted at Salem and Plymouth, reminds us of those old Roman days described by Bradford, the historian of Plymouth Plantation, in the words of Pliny (lib. 18, cap. 2): "How every man contented himselfe with 2 acres of land, and had no more assigned them." And chap. 3. "It was thought a great reward, to receive at ye hands of ye people of Rome a pinte of corne. And long after, the greatest presente given to a Captaine y^t had gotte a victory over their enemise, was as much ground as they could till in one day. And he was not counted a good, but a dangerous man, that would not contente himselfe with 7 Acres of land. As also how they did pound their corne in morters, as these people were forete to doe many years before they could get a mille."⁵

The records of the South Field Proprietary are incomplete. They do not open until the year 1680. Originally they covered a period from at least 1672 to 1742. But what was true of later times was probably also true of the earlier. There is but little change in agrarian customs.

⁵ Bradford, *History of Plymouth Plantation*, Collections of the Massachusetts Hist. Soc., 4th Series, vol. 3, 168. For an interesting account of this original source of New England history, and how it was stolen from the tower of the old South Church in Boston, during the American Revolution, when that church was used for a riding school and stable by British soldiery, see the Editorial Preface by Mr. Charles Deane; see also an interesting paper on "Governor Bradford's manuscript History of Plymouth Plantation and its Transmission to our Times," by Professor Justin Winsor, of Harvard College, a paper read before the Mass. Historical Society, Nov. 10, 1881. The existence of this priceless manuscript in the library of the Bishop of London, at Fulham on the Thames, was accidentally discovered years ago by members of the Massachusetts Historical Society, which had a copy made from the original, and this copy was published by the Society in 1856. It is one of the surviving shames that the original manuscript, stolen probably by some British soldier, has never yet been restored by England to New England.

In an old town on Cape Cod we have examined a continuous series of Commoners' Records from the latter part of the seventeenth century down to 1880, and have found scarcely any change in the character of votes or the modes of business procedure. In order, however, that there may be no question as to the nature of these old Common Fields at the time when there were ten of them in the one town of Salem, let us cite a few extracts from the Massachusetts Colony Records, which supply most admirably all missing evidence concerning the period before 1680. In the spring of 1643, the year the Massachusetts colony was divided into four shires, with Salem heading the list of Essex towns, it was ordered by the General Court, "For preventing disorder in corne feilds w^{ch} are inclosed in common, . . . that those who have the greater quantity in such feilds shall have power to order the whole, notwithstanding any former order to the contrary, & that every one who hath any part in such common feild shall make and maintaine the fences according to their severall quantities."⁶

In the fall of the same year was passed an Act which leaves no doubt as to what was meant by the ordering of a field. "Whereas it is found by experience that there hath bene much trouble & difference in severall townes about the manner of planting, sowing, & feeding of common corne feilds, & that upon serious consideration wee finde no generall order can provide for the best improvement of every such common ffeild, by reason that *some consists onely of plowing ground, some haveing a great part fit onely for planting, some of meadowe and feeding ground;* also, so that such an order as may be very wholesome & good for one feild may bee exceeding preiudiciall & inconvenient for another,—it is therefore ordered, that

⁶ Mass. Col. Rec. ii, 39, 195.

where the commoners cannot agree about the manner of improvement of their feild, either concerning *the kind of graine that shalbee sowed or set therein, or concerning the time or manner of feeding the herbage thereof*, that then such persons in the severall townes that are deputed to order the prudenciall affaires thereof, shall order the same, or in case where no such are, then the maior part of the freemen, who are hereby enioyned wth what convenient speed they may to determine any such difference as may arise upon any information given them by the said commoners; & so much of any former order as concerns the improvement of common feilds, & that is hearby provided for, is hearby repealed."⁷ But four years later, the Court went back to the old system, leaving the regulation of Common Fields entirely in the hands of the majority of interested proprietors.⁸ The above order is significant of the actual survival in New England of old English agrarian customs.

The practice of allowing the selectmen, in so-called private Town Meeting, to regulate the management of Common Fields seems, from the town records of Salem, to have been already in vogue in this place before the passage of the above Act, at least as regards the control of common fences and the regulation of pasturage upon the stubble lands. In the spring of 1638, it was ordered by Mr. Endicott, John Woodbury, and the rest of the Town Fathers, "fforasmuch as divers of our towne are resolved to sowe English graine this spring . . . that all common & particular home ffences about the towne shall be sufficientlie made vp before the twentieth of the ffirst moneth next [April] vppon the payne or penaltie of 5 s. euerie day after that any one is defectiue therein."⁹

One of the most extraordinary features of this old

⁷ Mass. Col. Rec., ii, 49.

⁸ *Ibid.*, 195.

⁹ Town Records of Salem, i, 84.

system of common husbandry, as practised in early Massachusetts, was the impressment of artisans by the town constable to aid farmers in harvest time. This undoubted power of the community over the time and labor of its individual members, a power seen in very recent times when constables impressed labor for mending the town roads, is a connecting link between New England towns and old English parishes. The following is the exact text of a colony law (1646), upon this matter of impressing labor in harvest time: "Because y^e harvest of hay, corne, flax, & hemp comes usually so neare together y^t much losse can hardly be avoyded, it is ordered & decreed by y^e Courte, y^t y^e cunstable of every towne, upon request made to y^m, shall require artificers or handicrafts men, meete to labour, to worke by y^e day for their neighbours needing y^m, in mowing, reaping, & inning thereof, and y^t those whom they help shall duely pay y^m for their worke, & if any person so required shall refuse, or y^e cunstable neglect his office herein, they shall each of y^m pay to y^e use of y^e pore of y^e towne double so much as such a dayes worke comes unto: provided no artificer &c, shalbe compeled to worke for others whiles he is necessarily attending on like busines of his owne."¹⁰ This impressment of laborers for harvest was only the revival of old English parish law,¹¹ and is precisely the same in principle

¹⁰ Mass. Col. Rec., ii, 180-1.

¹¹ In Lambard's "Constable, Borsholder, and Tythingman," a curious old volume, published in the year 1610, we find the following law: "In the time of Hay, or Cornharvest, the Constable, or any such other Officer, vpon request made, and for avoiding the losse of any corne, graine, or hay, may cause all such Artificers and persons (as may be meete to labour) by his discretion to serve by the day, for the mowing, reaping, shearing, getting, or inning of corne, graine, or hay, according to the skill and qualitie of the person; and if any such person shall refuse so to doe, then ought such Officer (vnder the pain of fortie shillings) to imprison such refuser in the Stockes, by the space of two daies and one night." See also 5 Eliz. cap. 4. This law appears to have been in operation in England down to very recent times, see J. W. Willcock, *The Office of Constable* (England, 1827; Philadelphia, 1840, p. 38).

as the requirement of local militia by the Selectmen to perform escort duty in the transportation of grain from the frontier towns to places of greater security.¹² The case of Captain Lathrop of Beverly, and his company, "the very flower of the county of Essex," as Hubbard calls them, will naturally recur to the Salem mind. These men were sent as a guard to some planters who were coming down the shore of the Connecticut river from Deerfield to Hadley with wagon-loads of grain and household goods. In crossing Muddy Brook, now called Bloody Brook, the company which was marching carelessly (some of the soldiers having put their guns in the carts, in order to be free to gather grapes) were suddenly attacked by Indians from the adjoining swamps, and nearly the whole band of soldiers and planters were cut off.¹³

Returning now to the old records of the South Field Proprietary, let us examine a few illustrative extracts, which, to the outside world, will doubtless be more interesting in their original form than they would in any modern paraphrase: "It is ordered & voated by the proprietors of the Southfield that the proprietors shall meet on the last Tuesday in ffebruary, every year for the making such orders as may be needfull for the Good of the Southfield, & it is left to the moderator & the Clarke¹⁴ to appoint the place where they shall meet & this shall be accounted sufficient warning without any further notice Given of the tyme when to meet, & it is farther agreed that such as doe meet shall pay Sixpence each person to be spent at the house where they meet [at a tavern?] and such as doe not meet on that day shall pay eighteen pence

¹² Mass. Col. Rec., v. 66.

¹³ Judd's History of Hadley, 147-9. Edward Everett's Oration at Bloody Brook. Washington Gladden, *From the Hub to the Hudson*. Several grandchildren of the old planters of Salem and Beverly perished in that terrible massacre at Bloody Brook, Sept. 18, 1675. See *Essex Inst. Hist. Collections*, Vol. xix, pp. 137-142.

¹⁴ In this mode of spelling "clerk," we have a suggestion of its original pronunciation. Compare also the family name, 'Clark.'

Each person for non appearance and this to stand as a Constant order Continually, the tyme of the day is to be at one of the Clock." The proprietors sometimes met at a private house, and perhaps occasionally in the open fields. The proceedings at a proprietor's meeting were always conducted according to rules of parliamentary procedure. A New England man, in reading the old Commoners' records of Salem, would be chiefly impressed by the fact that here is described a miniature Town Meeting. A moderator is always chosen; a clerk records the proceedings; surveyors (not of highways) but of fences are appointed; field drivers are chosen; and taxes levied.

Among the officers chosen at a Commoners' meeting was the Hayward, or, as he is sometimes called in the later town records, "the watchman upon the walls of the pasture." Old Homer's ancient men, watching from the walls of Troy the conflict of human cattle, were hardly more ancient than this time-honored agrarian office. The swineherd of Odysseus was a near kinsman of the Saxon Hayward. The office had nothing whatever to do with haying, or with grass-lots, as the name might at first seem to imply. It is derived from the Saxon *Hege* (German *Hag*, English hedge) and means the warden of the hedges or fences. Many Germanic places derive their names from the hedge with which they were originally surrounded (*e. g.* Wenhagen, Grubenhagen, the Hague). In fact the word town means only a place that is hedged in, from the old German *Zun* or *Tun*, modern German *Zaun*, meaning a hedge. The office of hayward was originally constabulary in character. He was appointed in feudal times in the Court Leet (German *Leute*), or popular court of the Norman manor and English parish, thus coming down into the parish life of New England.

Let us now glance at the duties of the ancient watchman of the old South Field. "Voted, That the Gates att both

Ends of the field be made good & well repaired. And that the Little Gates Especially be Made and Hung so as to be easy for Travellers to pass at the Charge of the proprietary, and that the Haywards accordingly are Desired & Impowered to do it & to Render an Account of the Charge the next proprietors meeting" "Voated that the Haywards . . or any of the proprietors of the Southfield shall have power to take up & Impound any horse kind or any other cattle w^{ch} shall be found loose upon his own ground or the grounds of any other proprietor of the Southfield feedings unless they be tyed & that none shall tether in the night time vpon the penalty of what the law doth determine in case of Damage fleazant [faisant]. And this to be from the tenth of April [more usually 25 of March] to the 14th of October . . & that the ffield be drove by the Hayward the 10th of April & not to be broken open till 14th October next."¹⁵ This custom of clearing the Common Field of all creatures in the spring and of breaking down the barriers again in the fall, so that the cattle of the whole village may pasture upon the stubble, is quite parallel to the Old English¹⁶ Lammas lands, which belong to individuals but are subject to certain rights of commonage. Lammas day, when the fences of the Common Fields were thrown down, was the occasion of a village festival in old England.

It will be remembered that in old England there were two sorts of pasturage in Common Fields, whence crops had been gathered, (1) stinted, (2) unstinted. The latter

¹⁵ A similar order, taken from the latter part of the South Field Records (1741) is even more striking than the above which bears the date of 1695: Voted, That no Person shall Teder any Horse Kind Cattle &c in said field, in the Night time, Nor in the Day time, Neither shall any Persons Bait their Creatures *on their own Land* on Penalty of forfeiting their Herbage, save only while they are at work there . . . the Haywards to Judge of the Same and to Debar them of their Herbage in the fall according to their Discretion or Have Power to take their Creatures from their Tederling Ropes & Impound them which they shall think most proper."

¹⁶ Laveleye, *Primitive Property*, 114, 241.

must have been customary at Salem during the early part of the seventeenth century, but at the time the records of the South Field begin, 1680, stinted pasturage was the rule. In that year it was voted "That on ye 14 of October next ye Proprietors have Liberty to put in Catle For Herbiges . . y^t is to say 6 Cows 4 Oxen 3 Horses or 12 Yearlings or 24 Calves to 10 Acres of Land and so in proportion to Greater or Lesser Quantities of Land According as they Have & no person shall Cutt or Stripe their Indian Corne Stalkes after they have gathered their Corne on penaltie of forfeiting Herbiges." At first sight, such a law might seem merely the resultant of local conditions, and of the somewhat commonplace discovery that Indian corn-stalks were good for foddering cattle. But there were similar laws in the agrarian communities of old England at this period. Gleaners had definite rights, and it was required that grain-stalks should be left at a certain height for the benefit of the village cattle. It appears from the South Field records that rights to "herbage" could be leased and transferred; "When the proprietors Shall put in their Creatures for Herbage they Shall Give an Account to the Haywards of the Number of the same And Whosoever shall Hire Herbage of any person Shall bring from Under the Hand of the Leasor for so much as he Hires to the Haywards by the 14 of October Next." Two other points are especially worthy of attention. First, many of the lots in the South Field appear to have been very small, a half acre, three quarters of an acre, an acre, and so on, in such small proportions. Second, bits of common land lying in the great field were granted out by the Proprietary to individuals for a term of seven years.



V.

SALEM

MEADOWS, WOODLAND, AND TOWN NECK.

WE have examined the subject of common fields, where planting lands were associated together under certain communal laws as regards the choice of crops, the regulation of fences, the reservation of herbage, and the employment of the lands of individuals for a common pasture in the fall of the year. We have seen that the old English system of land community was reproduced at Salem in some of its most striking features. Let us now briefly consider the topics of common meadow, common woodland, and common pasture, in the full sense of that term. In these matters we shall find that the old English customs were still more minutely followed. The first item of interest, in connection with the subject of common meadow, is the fact that the Old Planters¹ enjoyed such a common all for themselves. It was known as "the Old Planters meadow neere Wenham² common." And yet even this meadow

¹ Town Records of Salem, i, 76, 138.

² Wenham Common is mentioned only once in the town records of Salem, but Wenham Swamps are frequently noticed. These great swamps are interesting because they continued for many years common to both Ipswich and Wenham, as were certain swamps to Plymouth and Plympton. By an Act of the Province legislature in 1755, the proprietors of Ipswich and Wenham were authorized to meet and prohibit the general use of Wenham Great Swamp as a common pasture, in order that the growth of wood and timber might not be hindered. (Province Laws, iii, 799.)

Wenham is a curious case of one town budding from another. It appears from the Massachusetts Colony Records (i, 279) that the inhabitants of Salem agreed to plant a village near Ipswich River and the Court thereupon ordered, in 1639, that all lands lying between Salem and said river, not belonging by grant to any other town or person, should belong to said village. In 1643, it was ordered by the Court that "Enon" be called "Wennan" and constitute a town, with power to send one deputy to the General Court (ii, 44). Johnson, in his *Wonder-working Providence* (W. F. Poole's ed., 189), calls Wenham Sa-

was under the authority of the town, for it was ordered in 1638 "that the meadow that is in common amongst some of our Brethren Mr. Conant & others shall be fenced in the first day of April & left common again the last of September every year." This signifies that a piece of grass-land common to a little group of men for mowing was also common to the whole town for pasture in the fall.³

The whole town of Salem once had its common meadows, just as did the town of Plymouth,⁴ where the practice continued long after the partnership with the London merchants was dissolved. In both places, it was long customary in town meeting to assign lots where men should mow for one year, or for a longer period. The word "lot" as applied to land carries a history in itself. In 1637, it was ordered by the selectmen of Salem "that all the marsh ground that hath formerlie bene Laid out for hay grass shall be measured."⁵ This was the first step towards the allotment of the Salem meadows. Before this time they had been absolutely common, as is clear from a vote like the following, passed in 1636, by the Selectmen: "Wm. Knight Rec^d for an inhabitant, but noe Lands to appropriat vnto him but a 10 acre lott, & common for his cattle grasse

lem's "little sister." He says Salem nourished her up in her own bosom till she became of age, and gave her a goodly portion of land. "Wenham is very well-watered, as most inland Towns are, the people live altogether upon husbandry, New England having trained up great store to this occupation, they are increased in cattle, and most of them live very well, yet are they no great company; they were some good space of time there before they gathered into a Church-body" [1644].

³ Mr. William P. Upham, in the bulletin of the Essex Institute, ii, 51, says, in 1653 the town granted to George Emery the herbage of that parcel of land which was John Woodbury's in the old planters' marsh and all right of commonage the town might have claimed to him and his heirs forever, and in 1658, to Wm. Hathorne the town's right and privileges in the planters' marsh. Mr. Upham thinks the marsh was common to the old planters before Endicott's arrival, ii, 52.

⁴ Bradford, *History of Plymouth Plantation*, 216-7. *Plymouth Col. Rec.*, i, 14, 40, 56.

⁵ *Town Records of Salem*, i, 44.

& hay.”⁶ Eight months after the above order in reference to the measurement of the meadows, it was “agreed that the marsh meadow Lands that haue formerly layed in common to this Towne shall now be appropriated to the Inhabitants of Salem, *proportioned out vnto them according to the heads of their families.* To those that haue the greatest number an acre thereof & to those that haue least not aboue haue an acre, & to those that are betweene both 3 quarters of an acre, alwaies provided & it is so agreed that none shall sell away theire proportions of meadow, more or lesse, nor lease them out to any aboue 3 yeares, vnlesse they sell or lease out their howses wth their meadow.”⁷ This restriction upon the alienation of allotted land is repeatedly paralleled in the records of Plymouth Plantation, where grants were made to lie to so and so’s house-lot in Plymouth and not to be sold from it.⁸

The above division⁹ of Salem meadows among the families of the town was managed by the “five Layers out,” Captain Trask, Mr. Conant, John Woodbury, John Balch, and Jeffrey Massey. In the town records, there is to be seen in the handwriting of Mr. Conant, a list of the heads of families, and before each name stands the number of persons thereby represented. Roger Conant headed a family of nine persons; John Woodbury, six; John Balch, six; Captain Trask, seven; and Mr. Endicott, nine. These heads of households received each an acre, for, by

⁶ Ibid, 28.

⁷ Ibid, 61, 101-4.

⁸ Restrictions upon the alienation of land were very frequent at Plymouth and elsewhere. See Ply. Col. i, 46 (eight cases), 82. Cf. Laveleye, *Primitive Property*, 118, 121, 152. Mass. Rec., i, 201; Conn. Rec., i, 351; Allen, *Wenham*, 26; Freeman, *Cape Cod*, ii, 254; Lambert, *New Haven*, 163; Bond, *Wartown*, 995.

⁹ The granting of hay-lots by the year to old and new comers went on to some extent after the above division of the common meadow, which doubtless remained common, like the Old Planters’ meadow, after the hay had been gathered. The following is a specimen of an annual hay-grant: “Graunted for the yeare to mr. fisk & Mr. flogge the hay grasse of the salt marsh medow, at the side of the old Planters fields.” Town Rec. of Salem, i, 87.

the town vote, the greatest families could not have more than that amount of meadow. It gratifies one's sense of justice to be assured that Goodwife Scarlet, Mistress Robinson, the Widow More, Widow Mason, Widow Felton, Widow Greene, and "Vincent's mother" received each their proper allowance.

Common of wood, as well as of meadow, was long practised at Salem. It was ordered in 1636, that all the land along the shores on Darby's Fort Side, up to the Hogsties and thence towards Marblehead,¹⁰ along the shore and for twenty rods inland, should be "reserued for the Commons of the towne to serue it for wood & timber."¹¹ But the privilege of wood commonage was not to be abused. Whatever a townsman needed for fuel, fencing, or building purposes, he could freely have, but it was strictly ordered that "noe sawen boards, clap boards or other Timber or wood be sold or transported" out of town by any inhabitant unless the above be first offered for sale "to the thirteene men."¹² Similar restrictions in regard to the export of timber prevailed in Plymouth Colony.¹³ In the early history of Massachusetts, the colonial government, at one time, undertook to regulate the cutting of timber,

¹⁰ Marblehead is an interesting case of a town voluntarily created by another town. Usually legislative action came first and towns were forced to allow the secession of precincts. In 1648, it was declared at a general town meeting in Salem that "Marble Head, with the allowance of the general Court, shal be a towne, and the bounds to be the vtmost extent of that land which was mr. Humphries farme and sould to Marble Head, and soe all the neck to the Sea, reserving the disposing of the fferry and the appoynting of the fferry man to Salem." (Town Rec., i, 156-7). Cf. Mass. Col. Rec., i, 165. "It was proued this Court that Marble Necke belongs to Salem." Cf. Ibid, 226. In 1649, May 2, "Upon the petition of the inhabitants of Marble Head, for them to be a towne of themselves; Salem haveing granted them to be a towne of themselves, & appointed them the bounds of their towne, w^{ch} the Courte doth graunt." Mass. Col. Rec., ii, 266.

¹¹ Town Records of Salem, i, 17, 34, 112, 196, 219.

¹² Ibid, 30-1. An Act for the Preservation of Timber may be found in the Statutes of the Realm, 27 Eliz. An Act concerning "clap boards" occurs in the 35 Eliz.

¹³ Plymouth Col. Rec., Book of Deeds, 8.

by requiring permission therefor from the nearest assistant¹⁴ or his deputy, but this regulation seems to have been of no practical consequence. The matter was tacitly relegated to the towns, and they delegated the execution of their forestry laws to their own selectmen.

We have considered the topics of House Lots, Planting Lands, Meadow Lands and Wood Lands. The first two groups were lands held in severalty, although Planting Lands were common for a part of the year. The three chief categories of strictly Common Land are Wood, Pasture, and Meadow, corresponding to the old German terms, *Wald*, *Weide*, und *Wiese*. The reappearance of Common Wood and Common Meadow in the land system of Salem we have already seen. We come now to the last, and, in some respects, the most interesting division of our subject, namely, Common Pasture. This should not be confounded with the temporary pasturing of stubble lands or hay meadows after harvest. Real Common Pasture is always common, and there are usually no allotments of land in severalty.

A recent number of the *Contemporary Review* contains an interesting sketch of customs of common pasturage that still survive in Germany. The article is entitled "Notes from a German Village," and was written by an English professor¹⁵ who spent a summer vacation in the little town of Gross Tabarz, on the northern slope of the Thuringian mountains. "Early every fine morning," he says, "we were awaked by the blowing of the *Kuh-hirt's* horn as he passed through the village, and any one watching his progress would see a cow turned out from one

¹⁴ Mass. Col. Rec., i, 101. Cf. Judge Endicott's Brief, *Lynn v. Nahant*, 6.

¹⁵ *Contemporary Review*, July, 1881. Article by Professor Aldis.

outhouse, two more out of a second, and so on, the procession gradually increasing until, on leaving the village, the *Hirt* and his assistant would have from eighty to a hundred and twenty cows and bulls under the charge of themselves and their two dogs. In wandering in the daytime through the forests we often heard from a distance the tinkling of the large bells which the cows carry, and in a few minutes would meet the whole procession coming gently along the high road or narrow lane, somewhat to the alarm of the more timid members of our party, but by no means to the diminution of the picturesqueness of the scene. By six o'clock in the evening the *Hirt* had gathered his flock together, and driven them back to the village, where the ox knows its owner, and, unbidden, each turns into its own stable."

When we read the above description, we were tempted to believe that the English professor had written his story of summer experience upon the basis of old records in Salem. Like the villages of the Thuringian Forest, Salem once had its cowherds, swineherds, and goatherds. They too, of old time, came through the streets of the village blowing their horns, and creatures were turned out to their pastoral care. In the spring of 1641, it was agreed in Salem town meeting that "Laurance Southweeke & William Woodbury shall keepe the milch cattell & heifers . . . this summer . . . They are to begin to keepe them, the 6th day of the 2d moneth. And their tyme of keeping of them to end, the 15th day of the 9th moneth. They are to driue out the Cattell when the Sun is halfe an hower high, & bring them in when the sun is halfe an hower high. The cattle are to be brought out in the morning into the pen neere

to Mr. Downings pale. And the keepers are to drive them & bring such cattle into the Pen as they doe receaue from thence.”¹⁶

The duty of village swineherds was similar. Early in the morning they were “to blow their horne” as they went along the street past the houses, and the townsmen brought out their swine to the keeper, who took charge of the drove until sunset, when all returned to town and every townsman received his swine again, which he kept over night in a pen upon his own premises.¹⁷ The cattle were also kept over night by each owner, either in private yards or in the common cow houses.¹⁸ In the morning the creatures were driven to the great Cattle Pen,¹⁹ at the gate of which the herdsmen stood waiting, and, at a certain hour, drove all afield. If a townsman arrived late with his cows, there was no help for it but to follow after and catch up with the herd, or else to be his own herdsman that day and run the risk of his cows breaking into inclosures upon the plantation.²⁰ The herdsman was originally paid for his services by the town, but afterwards by individuals, at a rate fixed upon in town meeting, usually about four shillings sixpence per season, for the charge of every cow, the settlement being made in butter, wheat, and Indian corn.²¹ The cattle of every town were marked with the first letter of the town’s name, roughly painted with pitch. Towns whose names began with the same letter, for example, Salem, Salisbury, Sudbury, Strawberry Bank (Portsmouth) were obliged to agree upon differently shaped letters. Salem had a plain capital S; Salis-

¹⁶ Town Records of Salem, i, 99. For other illustrations of the duties of the Town’s Herdsmen, see Felt’s Annals, i, 277–80. Herdsmen were employed in the Great Pastures of Salem down to a very recent date. Felt, i, 202.

¹⁷ Hist. Coll. Essex Inst., xi, 36. Town Records of Salem, i, 100.

¹⁸ *Ibid*, 94.

¹⁹ *Ibid*, 10, 39, 40, 66.

²⁰ *Ibid*, 41.

²¹ *Ibid*, 207.

bury, the sign of the dollar, \$; Sudbury added an upright dash to the top of its initial S; Strawberry Bank added a straight stroke downward from the tail end of its S.²²

It is perhaps not generally known that Salem had not only town herdsmen, but actually town cows, town sheep,²³ town dogs,²⁴ and a town horse.²⁵ In the town records we read of a "townes cowe" killed by the butcher, and the Selectmen are ordered to sell the beef and hide for the town's benefit. Both cows and sheep came into the possession of the town in settlement for debts or taxes. But a most singular order was that which was passed in Salem in 1645, whereby half a dozen brace of hounds were to be brought out of England, the charges to be borne by the town. These town dogs were probably used for herding cattle or hunting wolves. Perhaps Salem's order was the first suggestion for the Act passed by the colonial legislature of Massachusetts three years later, whereby the Selectmen of every town were authorized to purchase, at the town's expense, as many hounds as should be thought best for the destruction of wolves, and to allow no other dogs to be kept in town, except by magistrates, or by special permit.²⁶

Town flocks and herds, and town herdsmen imply the existence of town pastures. The first mention of this subject in the town records of Salem was in 1634, shortly after the division of the ten acre lots. It was then agreed that the Town Neck should be preserved for the feeding of

²² Mass. Coll. Rec., ii, 190, 225. ²³ Town Records of Salem, i, 185, 189, 195.

²⁴ *Ibid*, 139. ²⁵ Felt, Salem, i, 281.

²⁶ Mass. Col. Rec., ii, 252-3, *ibid* for law relating to Sheep Commons. The keeping of greyhounds for coursing deer or hare, and of setters for hunting, was forbidden in the parishes of Old England. See Lambard's *Constable* (1610) 81, and the statute 1 Jac., Cap. 27.

cattle on the Sabbath. Individuals were forbidden to feed their goats there on week-days, but were required to drive them to one of the larger Commons, so that the grass upon the Neck land might have a chance to grow for pasture on the Lord's day.²⁷ For Salem, the Town Neck was a kind of home-lot for baiting the town's cattle. In old England such a pasture would have been termed a *Ham*. William Marshall, an English writer of the last century, in describing the agrarian customs of his country, says: "On the outskirts of the arable lands, where the soil is adapted to the pasturage of cattle . . . one or more stinted pastures, or *hams*, were laid out for milking cows, working cattle, or other stock which required superior pasturage in summer."²⁸ The practice of stinting the Neck land for pasture must have begun at a very early date, but not much is said about the matter in the published volume of the town records (1634-1659). However, the following vote of the old Commoners, in the year 1714, will serve to illustrate the principle as applied to a permanent town pasture: "Voted, that y^e neck of land to y^e Eastward of the Block house be granted and reserved for y^e use of y^e town of Salem, for a pasture for milch cows and riding horses, to be fenced at y^e town's charge, and let to y^e inhabitants of y^e town by y^e selectmen and no one person to be admitted to put into said pasture in a summer more than one milch cow or one riding horse, and y^e whole number not to exceed two and a half acres to a cow and

²⁷ Town Records of Salem, i, 9.

²⁸ Laveleye, *Primitive Property*, 245, cf. 59. Nasse, in his *Agricultural Community of the Middle Ages*, p. 10, quoting Marshall, observes: "Every village . . . in the immediate vicinity of the dwelling-houses and farm-buildings, had some few inclosed grass lands for the rearing of calves, or for other cattle which it might be thought necessary to keep near the village (the common farmstead or homestall)."

four acres to a horse; y^e rent to be paid into y^e town treasurer for y^e time being for y^e use of the town of Salem.”²⁹ Authority to stint common pasturage was given by the colonial legislature to the selectmen of every town in the year 1673.³⁰

It is noteworthy that a part of the Neck lands continued to be used, and was specially known as a Town Pasture until long after the middle of the nineteenth century. According to a survey made in the year 1728, there were at that time about one hundred and three acres of land in the Town Neck, a part of it having been planted by poor people holding cottage rights during the town's pleasure. In 1735, that part of Winter Island which was not needed for drying fish was let out with the Neck as a common “town pasture,” and so both Neck and Island continued to be used together with a common stint, *e. g.*, “2½ acres to a cow & 4 to a horse,” but with special preference allowed to inhabitants dwelling nearest the Neck. In 1765 the town authorized its treasurer to let the Island and the Neck together for the pasturage of seventy-two milch cows at 10s. 8d. In 1824 Winter Island was annexed to the so-called Alms House Farm, which, by this time had enclosed about ninety acres of the old Neck lands. Instead of the town's cattle, the town's poor were now fed in commons upon the Town's Neck. It is a curious and instructive commentary upon the transformation of communal institutions, that an old Town Pasture should become the material basis for a Town

²⁹ Report of the City Solicitor on the sale of the Neck Lands, communicated to the City Council, Dec. 27, 1858. To Judge Endicott's valuable report we have been greatly indebted for facts in the paragraph concerning Winter Island and the Town Neck. Cf. Felt's *Annals of Salem*, i, 191-2.

³⁰ Mass. Col. Rec., iv, Part 2, 563.

Farm and a Hospital.³¹ The twenty-three acres remaining from the Neck land passed under the control of the Overseers of the Poor, who annually appointed a Hayward and voted when the town or city of Salem (city since 1836) might drive its cows afield. Of course a fixed rate was now demanded for every creature and accommodations were strictly limited. There used to be gates leading into the Town Pasture upon the Neck. They seem to have lasted until a comparatively recent period, for a Salem poet of our time has sung their praises.

What rapturous joy
Kindles the heart of an old Salem boy,
As he returns, though but in thought, to take
That old familiar walk "down to the Neck!"
The old "Neck Gate" swings open to his view,
At morn and eve, to let the cows pass through.³²

³¹ "In 1747, a committee having been appointed to select a site for a pest house, reported Roache's Point on the Neck (where the work house now stands), and recommended one to be built there. The Town accepted the report, and voted a sum to build it, "and that Roache's Point be the place for erecting said house" (see above Report, 13). "It also appears from the records that the town exchanged certain portions of the land received from the commoners, about five acres, for land belonging to Allen's farm at Roache's Point and at Pigeon Cove. And in 1799, a hospital was built for small pox patients, which was standing within the last twenty years" (*ibid*, 14).

We note that a Work House was ordered by the town of Salem, March 16, 1770, to be placed on the northeast part of the present Town Common or Training Field. Some very interesting rules for the management of a parish Work House, which is an Old English institution, may be found in the MS. Town Records of Salem under the date of March, 1772.

³² From Mr. Brooks' poem, previously mentioned.

VI.

THE

GREAT PASTURES OF SALEM.

ORIGINALLY there were still larger Town Pastures in Salem than the Town Neck. These were known as Cow Pastures or the Cattle Range. In 1640 it was resolved by the Town that none of the Commons within the Cattle¹ Range should henceforth be granted to any individual use. The boundaries of this great tract, known as the Cattle Range, are described in the original records as beginning at the head of Forest river, where fresh and salt water meet, and as extending thence southward, and up to Mr. Humphrey's farm,² thence to the pond, "and so about to Brooksby," or to the present town of Peabody. The area of this great Common Pasture once embraced about four thousand acres, and what remains of it is known to this

¹ Town Records of Salem, i, 108, 109. Felt, *Annals of Salem*, i, 199.

² "It is agreed that Mr. Humfrey his ground shall begin at the clift, in the way to Marble Head, wch is the bound betwixt Salem and Linn & so along the line between the said townes to the rocks, one mile by estimation, to the great red oake marked," etc. See Mass. Col. Records, i, 226. Mr. Humfrey's Farm was the historic germ of Swampscott. He was one of the six original patentees of the Massachusetts Colony.

day as the Great Pastures of Salem. They now embrace about three hundred acres and are a familiar land-mark to every native of the region. A local bard has not forgotten them in his enumeration of the attractive features of this ancient town :

“The old town-pastures have not passed from sight,
‘Delectable Mountains’ of his childhood—there
They stretch away into the summer air.
Still the bare rocks in golden lustre shine,
Still bloom the barberry and the columbine’
As when, of old, on many a ‘Lecture Day,’
Through bush and swamp he took his winding way,
Toiled the long afternoon, then homeward steered,
With weary feet and visage berry-smeared.”³

The division of the original Cattle Range or Town Pastures among the various parishes and dependents of Salem is one of the most important chapters in her local history, although it has received little attention. The witch trials, which occurred only a few years before the passage of Salem’s agrarian laws, have quite eclipsed them in the popular mind, which always dwells upon the phenomenal element in human history rather than upon natural and underlying laws. The communal spirit, implanted and fostered in the parishes of Salem by the acquisition and administration of common land, was of more vital and enduring consequence in the history of that town than any temporary obscuration of the common sense, chronicled as one “dark day.” Agrarian laws, or the administration of the *ager publicus*, acquired by conquest, constitute the real economic history of Old Rome, and we may well believe that the long conflict between the Old Commoners, or Patricians, with the Cottagers, or Plebeians, of Salem was of great moment in the upbuilding of this village commonwealth. The grounds of the conflict

³ From the Rev. Charles T. Brooks’ poem, previously mentioned.

were as deep-seated as the aristocratic class-distinctions of Old England, which are felt in New England to this day; and the results of the conflict are as lasting and potent for good as the freehold land tenure, which in Salem, as elsewhere, evolved for many poor cottagers, or landless inhabitants, out of the ancient Town Domain.

In a former chapter it has been shown that many poor people, workingmen, servants, and fishermen, were received into the town of Salem simply as inhabitants, oftentimes with the right of building a cottage upon some bit of waste land, but without any recognition as landed proprietors. Some of these poor people were granted house-lots, to be held during the town's pleasure. These so-called "cottage-rights" were akin to the shanty-rights that are sometimes temporarily allowed to Irish squatters along the lines of our American railways, or upon the waste and unoccupied land of our towns and cities. Such privileges, when accorded by any real authority, were like the Old English cottage-rights, whereby poor peasants were allowed to build a hut or cottage upon the lord's waste land, the common land of the manor. Upon this waste, the peasants usually enjoyed certain rights of commonage; for example, to wood, turf, and pasturage; and they often cultivated in common certain portions of arable land and gathered the hay from certain common meadows, paying their lord in produce or in base services for the privilege of retaining these immemorial customs. In the Middle Ages, such tenants were variously known in manorial records as *Cottagii*, *Coterelli*, *Cotlandarii*, *Coterii*, *Bordarii*, *Cotmanni*, any one of which terms signifies much the same as Cottagers.⁴

⁴ For the best discussion of the English Cottagers, see Professor William F. Allen's paper on "The Rural Classes of England," 4, 5, 8, 10, 11. Cf. Laveleye, "Primitive Property," 22, 247.

Many of the first settlers of New England were, in economic respects, akin to this class of Cottagers. More of our New England colonists than is commonly supposed belonged in Old England to the landless class, and, like all emigrants since the world began, most of them left their native country in order to improve their economic condition. Many of these English emigrants were so poor that they came out to America as indented servants, virtual serfs, until they could work out their freedom. By an express order of the General Court of Massachusetts, no servant could have any land allotted him until he had faithfully completed his term of service;⁵ and, in Salem, men who had yet to serve were absolutely refused recognition as inhabitants of the town.⁶ Of this class of men, who were the slaves of English capital, Salem undoubtedly had its share. The Reverend John White, in his "Planter's Plea," speaks of three hundred colonists, "most servants," who were sent over to Salem by the Massachusetts Company; and Barry, the historian of Massachusetts, admits that there were originally one hundred and eighty servants sent to that town.⁷

In Massachusetts, stock companies, in which, by the way, the governments of both town and colony originated, took the place of what, in Old England, had been a feudal or manorial regime. English capital, and the spirit of corporate association for economic purposes, were fundamental facts in the colonization and local upbuilding of Massachusetts. Although landless men acquired freeholds by patient industry in the older towns, or by adoption into westward moving companies, yet, in the beginning, these men had a struggle for existence almost as hard as

⁵ Mass. Col. Records, i, 127.

⁶ Town Records of Salem, i, 47.

⁷ For references, see chapter on the "Origin of Salem Plantation."

that of poor men in Ireland to-day. Undeniably there was an aristocratic aversion on the part of our thrifty Puritan forefathers against granting land to new comers, unless they were men of some property. This feeling was entirely natural. Our forefathers were brought up in the English parishes, and they regarded with contempt all paupers and vagabonds.⁸ To this day the old feeling survives in New England, and a poor man who gets anything out of one of our towns gets it by the hardest. In Salem and in the first Plantations of Massachusetts, the poor white trash of the period had greater difficulties to contend with than it did originally in Virginia, for the communal spirit, intensified by the Puritan idea, not only forbade dispersion and squatter sovereignty, but wisely kept the control of the commune in the hands of good, substantial citizens, who were able to pay taxes and help support preaching.

In the year 1660, it was enacted by the General Court of Massachusetts that, after that date, no cottage or mere dwelling house, except such as were already in existence or should thereafter be erected by town consent, should be admitted to the right of commonage, which, in those times, meant chiefly the right of pasturing town-land. This Act,⁹ although indicating a continuity of the ancient communal spirit, marks nevertheless the first important concession to the plebeian element in our Massachusetts towns. The concession was as necessary as it was important for the economic evolution of the original narrow communes. The ranks of the cottagers, originally landless men, but now in many cases possessed of small holdings by thrift and purchase, had been greatly strengthened

⁸ For an early law against Vagabonds and Tramps, see *Mass. Col. Records*, iv, Part 2, 43.

⁹ *Mass. Col. Records*, iv, Part I, 417.

by the so-called "New Comers," a wealthier class who had pressed into the village communities of Massachusetts and who, by reason of their wealth, had obtained lands, although like the Cottagers they were kept out of any dividend of the Commons. Towards the close of the seventeenth century these New Comers and the Cottagers, or the *Novi Homines* and the *Plebs* of our New England towns, became a very strong party, so strong, indeed, in some communities, that they overthrew the patrician element, or the descendants of the Old Comers, and carried town meetings by revolutionary storm.¹⁰

In the year 1692, the General Court, still under the influence of the patrician party in the towns, determined to allow a division of the Common Lands "by the major part of the interested" proprietors, but it was carefully enjoined, as in 1660, that "no cottage or dwelling-place in any town shall be admitted to the privilege of commonage of wood, timber and herbage, or any other privileges which lie in common in any town or peculiar, other than such as were erected or privileged by grant before the year one thousand six hundred sixty-one, or that have since, or shall be hereafter granted." This Act¹¹ of 1692 is the real point of departure for the division of the Salem Pastures and of all other Common Lands in Massachusetts. The local authorities in Salem were evidently familiar enough with the text of this law, for it is frequently quoted in the town records, and the town clerk speaks of the original as in "Folio 23, Province Law Book." The Salem town records which cover this period of agrarian

¹⁰ The histories of old towns like Haverhill and Newbury afford a striking commentary on that agrarian revolution by which the common people of Massachusetts declared their independence of lordly townsmen in the commune long before the English Colonies in America threw off the tyranny of a privileged class of rulers.

¹¹ Acts and Resolves of the Province of Massachusetts Bay, i, 65.

agitation have not yet been printed, but even a cursory examination of the manuscript volumes, now preserved in the office of the city clerk of Salem, will convince the student that the Land Question occupied *public* attention far more steadily than did the contemporary question of Witchcraft. For agrarian communities, the chief interests are always connected with the use of the soil, just as for fisher-folk the chief thought is always concerning the spoil of the sea. In reading the town records of Plymouth or of Salem, one cannot fail to perceive that the undercurrent of New England town-life, however broken the surface, is one steady and unceasing drift of hard common sense, driven on by the resistless pressure of cumulating majorities, and by the grinding force of public necessity.

The pressure upon the Old Commoners of Salem became so strong in 1702 that they voted, agreeably to the colonial law of ten years before, that all persons who had cottage right previous to 1661 should be classed among the "proprietors" of Common Lands. It was also voted, in the above year, for the benefit of the New Comers, or "For ye Incouragement & Growth of this Town: That all Free-holders of this Towne vizt: Every one yt hath a Dwelling house & Land of his own proper Estate in Fee Simple Shall have & is hereby Admitted unto ye privilege of Commonage." At the same time it was carefully provided that nothing should be done in reference to the division, stinting, fencing, or disposal of the Commons, unless the matter be brought before town meeting "in an orderly way by ye Selectmen of ye Town, and there Debated & Voted, as hath been usuall." It is important to state that the Old Commoners in Salem seem to have always constituted the sovereign element in town meeting and to have controlled the machinery of local government.

The *Novi Homines* and the *Plebs* never really obtained the upper hand in this aristocratic old village republic. All agrarian reforms in Salem were brought about by concession on the part of the patrician element, and not through popular revolution. The town fathers, or the heirs of Old Comers, slowly yielded to the wishes of the New Comers, and thus the agrarian commune was gradually widened without losing its aristocratic and sovereign character; for newly admitted members immediately became as conservative of communal rights as had been their more favored predecessors.

In 1713, a meeting of Commoners was called under warrant from a justice of the peace, issued in due form to one of the Proprietors. This meeting, after it had been duly organized, encountered from some quarter an obtrusive line of policy. Complaint was made because the meeting was held in too small a place and without sufficient warning. After much debate, it was agreed to make present proceedings null and void and to summon a new meeting. A fresh warrant was issued by a different justice and the people gathered together in the chief meeting house of Salem. A moderator and a clerk were appointed as in ordinary town meetings (of which agrarian meetings were probably the prototype), and a committee of nine was chosen to receive claims to the Common Lands of Salem. This committee was instructed to receive such claims as were authorized by the town vote of 1702 and by the Province law of 1660. The committee had also to consider what should be done for those who paid heavy taxes (that is, for the patrician element) and what for those who had no claims at all.

The committee posted a public notice upon the door of the Meeting House, warning inhabitants to bring in their claims to shares in the Common Lands. According to

previous instructions, the committee proceeded to record applications in two distinct columns, one for cottages erected before the year 1661, and the other for all freeholders privileged by the town vote of 1702. Any one studying these parallel lists will notice that many freeholders represent also certain cottage rights established upon their own farms (as upon Old English manors), and also upon the Town waste, and even upon the Village Green. For example, Colonel John Hathorne, a well-to-do man (whose name represents the famous Hawthorne family) claims a house or freehold in the village, also a house upon his farm, and two cottage rights there. Mr. Gedney's name stands for three freeholds and for six cottage rights, four of them being in his great pasture and one upon Antrum's farm. John Pickering (the ancestor of Washington's Secretary of War) represents three freeholds and six cottage rights, one of the latter being at Glass House Fields, and another in South Field Point. Some of the cottage rights were in North Fields and some in South Fields. One cottage right was in the "Horse Pasture;" another on "the Towne Common."¹² One man, who is spoken of rather disrespectfully as "Old Nichols," had a cottage near the Pound, in North Fields. The cottage rights are usually specified by the name of some owner, past or present; and, in some instances, a considerable number of rights appear to have been massed in

¹² In early times, the present Town Common (Washington Square) of Salem appears to have been a kind of Town Waste. People were sometimes allowed to build shanties upon it, possibly for the purpose of serving refreshments on Training Days. Portions of the Common were leased for public purposes down to the year 1779 (Felt, ii, 197) and possibly until a much later period, for the custom continues to this day in many old communities, where the Selectmen are empowered to lease Town Land. At one time, there were public buildings upon the Common, *e. g.*, a school-house, a fire-engine-house, an alms-house, a cannon-house, etc. Churches were sometimes built upon the Town Common in the older villages of New England.

one man's hands, indicating possibly that cottage rights, after they were recognized as valuable, were bought up by rich men, as were Revolutionary and Pension Claims in after times.

In 1713, the same year in which the town of Salem first recognized the claims of her Cottagers and all Freeholders to share in the division of her common and undivided lands, was passed that vote which secured forever for public use the old Town Common or Training Field, the beautiful Washington Square of to-day. The origin of this Common is coëval with the origin of the town, for this tract was part of the oldest Town Land. The first distinct reservation of Salem Town Common was in 1685, when it was appointed by the town as a place where people might shoot at a mark.¹³ In the year 1713, it was voted, "That the common lands where trainings are generally kept, before Nathaniel Higginson's house, be and remain as it now lays to continue forever as a Training Field for the use of the said town of Salem."¹⁴ Originally Salem Common was a marshy tract, full of sedge and brush. "We have seen the men who have cut the flags and hoops on the Common and had rights to it, till the final settlement between the Cottagers and Commoners in 1713,"¹⁵ says an old resident, writing in 1819. The

¹³ Felt, *Annals of Salem*, ii, 495.

¹⁴ MS. Town Records of Salem, vol. iii. The first volume of the Town Records of Salem, 1634-59, has been published by the Essex Institute, in a form and with a literal exactness that are worthy of wide imitation. The other volumes, which must also be published and utilized before early Salem History can appear to the world as something besides Salem Witchcraft, are preserved in the vault at the office of the City Clerk. The second volume covers the period from 1659 to 1680; the third, from 1680 to 1748; and the fourth from 1748 to 1775; etc. Little conception of the richness of these unpublished Town Records can be had from the brief use made of them by the writer of this monograph, or by other investigators with only special points of interest in view.

¹⁵ Quoted from Essex Register, of August 4, 1819, by B. F. Browne, *Hist. Coll. of Essex Inst.*, iv, 2.

surface of the now level Common was for a long time very uneven, with numerous hills and marshy hollows, and pools of standing water. The tract was levelled about the beginning of the present century, at an expense of twenty-five hundred dollars; and, in honor of this public improvement, the Selectmen, in 1802, ordered the Common to be called "Washington Square," but the old name of "The Common" is still retained in popular use, like the name of "Boston Common,"¹⁶ and it is to be hoped that it will survive forever, as an open record of the original land community from which the modern city has evolved.

At the same time the Town Common was reserved, it was also voted that all highways, burying places, and other common lands lying between the Town Bridge and the Block House, should remain common forever for the use of the town. Thus were secured to Salem those necessary communal foundations for the living and the dead, for the present and the future. The reservation of land for cemeteries, for streets and sidewalks, and for all public open spaces, is not ordinarily thought of as a survival of the principle of agrarian community in the midst of individual landed property which now seems to prevail almost everywhere, but this survival is none the less real because it is common and unnoticed.

Before proceeding to a division of the Common Lands, the Proprietors made still further reservations for the benefit of the community. From that magnificent town patrimony of four thousand acres of Commons, sixty acres were now granted for the use of the poor "and such others as are Livers in the Town but not Privileged to a Right

¹⁶ An attempt was once made to change the name of "Boston Common" into "Washington Park."

in the Common Lands." These were they who had no claims. It is interesting to observe how this reservation for the poor was administered. The sixty acres were appointed for a cow pasture, three acres to a cow right; and the Selectmen were from year to year to nominate such poor people as deserved the right of commonage. Thus, it should be observed, there was no premium placed on poverty, for only "such as have a cow of their own to keep" could secure the right of common pasture. A cottager who owned only a goat or a pig was ruled out from town bounty, for he could not be classed with his betters who owned a cow. An end, however, was made to all possible jealousy of Salem's aristocratic poor, when, in 1834, the town sold the pasture for six hundred dollars, and thus re-asserted its right of communal domain. But, by this time, the town was providing for its poor in a more excellent way. The Town Farm had now taken the place of the old Town Pasture, and Winter Island was reserved for the benefit of poor fishermen, who could there find a place to dry their fish. But a rent of five shillings per annum had to be paid to the town for the use of Winter Island,¹⁷ thus indicating that the title to this tract, like the right to the reservation for the poor, was still vested in the town.

Besides the reservations for the poor, for the Town Common, and for other public purposes, small lots were assigned for the benefit of the clergy of Salem. In Old England, and in Southern Colonies like Maryland and Vir-

¹⁷ During the late civil war, Winter Island was given over to the United States Government, for the purpose of harbor-defence, but since the return of peace Congress has granted the use of the Island to Plummer Farm School, so that the old locality is still a kind of public agrarian interest. The Neck lands, once a kind of Home Pasture for "Riding Horses," Milch Cows, etc., have now been converted into a pleasure-ground called "The Willows," where cook-shops, booths, and merry-go-rounds preserve for "the dear old Neck" its primitive character of a Home Pasture, or out-door nursery, for Salem children.

ginia, such reservations would have been called Glebe Lands. Ten acres were granted to the ministry of the First Parish of Salem; but for the clergy of the Second Parish five acres were considered enough. Five acres were also allotted to the pastor of the Village Precinct, afterwards known as Danvers, and five to the Middle Precinct, later called South Danvers, now Peabody. "The East Parish lot," says Felt, "was sold in 1832 for \$146. That of the First Parish was disposed of in 1819 for \$565. This sum was added to the fund for supporting their ministry, except enough of its income to purchase twenty bushels of potatoes annually for the clergyman then their pastor, which had been the amount of the rent."¹⁸

Including these Glebe Lands and four hundred acres which were reserved to satisfy incidental claims, for example those of the town of Lynn in the boundary disputes then pending, there were altogether at the disposal of the Proprietors something over four thousand acres, not reckoning abatements made on account of the quality of the land. Upon adding up the claims, there were found to be 1,132 rights to commonage. Of these, 138 rights or the equivalent of 460 acres, belonged to the inhabitants of Salem Village and "Ryall's Side," or the North Precinct; 204 rights or 680 acres belonged to the dwellers in the Middle Precinct; and 790 rights, or 2,630 acres, to the Proprietors of the body of the town, or of the two lower parishes of Salem proper.

In the year 1722-3, the Commons of Salem were divided between the claimants, according as they happened to be grouped in the above named local precincts. To Salem Village and Ryall's Side¹⁹ was granted all the Com-

¹⁸ Felt, *Annals of Salem*, i, 190.

¹⁹ The Records of the Proprietors of Salem Village and Ryall's Side from 1729-99 are still in existence.

mon Land beyond Ipswich River. The Middle Precinct received the Commons lying in that neighborhood. The body of the town of Salem retained the Common Lands lying on the south side of a line drawn from the north-east end of Spring Pond, beginning at a run of water there, thence easterly to so-called Tylly's Corner, then back of the Glass House Fields and down the plains to the house formerly owned by Humphrey Case, and so on to Norton's house and the Town Bridge, which entire circuit embraced the greater part of the Commons, or over 2,500 acres, besides the so-called "Flint's Pasture."

After this grand division of communal property, a new board of Commoners was instituted for each precinct, and the same old system of corporate administration of common property went on unchecked, and with the old spirit of aristocratic exclusiveness as regards all New Comers. The above division not only gave greater strength to all freeholders and cottagers in the community, but it furnished an economic basis for two new towns, besides various parishes. The old system of agrarian community has died out in the younger towns which branched off from Salem, but in the mother-town it has been perpetuated down to the present day.

The history of the gradual curtailment of the Great Pastures of Salem, from their original extent of 2,500 acres, at the time of the above distribution, to their present comparatively narrow limits of 300 acres, does not fall within the scope of this monograph, which is less concerned with purely topographical details than with the origin and continuity in Salem of an archaic system of which the Great Pastures are a curious survival. Every year since the above division, the Proprietors of the Great Pastures have met, elected a moderator, listened to the report of the clerk, and have passed their customary

orders concerning the "stinting" of pasturage. The common domain, like the board of Commoners, has been gradually shrinking up, as did the Roman Senate and the dominions of Rome. The heirs of the original Proprietors, the *decuriones* of Salem, have been gradually dying off or selling out their rights to others. Farm after farm has been set off by vote of the Commoners to those who desired individual possession of their rights. Piece by piece the old Commons have been parcelled out into individual holdings; but still, down to the very present, a remnant of the once Great Pastures has been preserved. The actual quantity of land is of little significance compared with the fact that for nearly three centuries this old system of commonage has remained practically the same in the town of Salem. The writer has examined, at the house of Dr. Henry Wheatland, the present Commoner's clerk, the original records, which are remarkably complete, and he finds that a vote recorded in the last quarter of the nineteenth century differs very slightly in substance from votes passed throughout the seventeenth century. The charm of novelty should not be expected in a system which has its chief interest in the fact of endurance without a change for more than a thousand years in Old England before the English thought of conquering for themselves a New England.

And here, in passing, let us notice one illustration of the survival of archaic custom in the method of conveying land in early Salem "by turffe and twig," which is mentioned by Palgrave as a Saxon form, to which later deeds and records were only collateral. This singular custom, not unknown among ruder peoples than the Saxons, was kept up in the rural parishes of old England and was thence directly transmitted by the Puritan Fathers to

these New England shores, where it long survived in the towns of Essex county, which after all was but a colony of modern East Saxons, with a North-folk and a South-folk, for county neighbors, though without a Wessex. What links in history are these old county names and local customs! What an iron grip upon early English precedent was that in 1695 when John Rusk of Salem, in the presence of two witnesses, took a twig from a growing tree and a piece of green turf, both upon his own land, and said, "Here, son Thomas, I do, before these two men, give you possession of this land by turffe and twigg!"

The right of alienating shares in the Great Pastures by deed was very early provided for by the old commoners of Salem. In 1732 a committee of nine men was appointed to measure, lay out, and convey lots from the common domain. Lots large enough for building purposes were thus frequently sold off by vote of the majority of commoners, who divided the proceeds. Individual rights were conveyed by deed, signed by the Committee in the name of the Proprietary. There are several such deeds in the town records, *e. g.*, vol. iii, under the dates, December 25, 1732; June 26, 1733; September 19, 1738. The above committee also compounded with persons who had encroached upon the Commons; for example, a man who had built a shop upon common land was allowed to remain by paying thirty-five shillings per rod for the ground occupied.

From the open air meetings of Saxon townsmen deliberating as to when and how they should plant, harvest and pasture their Common Fields, it is but a single step in history to the Court Leet, or popular assembly of tenants, upon the manorial estate of an English lord, or of a Maryland proprietor. It is but another step in his-

tory from these popular assemblies to the modern lawn meeting in Sir Walter's Park, whither flocked

"His tenants, wife and child, and half
The neighboring borough with the Institute
Of which he was the patron"—*Tennyson's "Princess."*

From the Field Meetings of English Institutes, the transition is easy to a Field Meeting²⁰ of the Essex Institute. Here, as the English poet sings, all the sloping pasture seems to murmur, sown with happy faces and with holiday, and here, too, as in Sir Walter's Park, sport goes hand in hand with science.

ADDENDUM.

The following communication, made to the Salem Gazette, August 16, 1881, by Mr. H. F. Waters, a well known antiquary of Salem, is valuable for its items of historical interest and for its exact transcription of votes from the original Town Records:

Messrs. Editors: In connection with the paper of Mr. Adams, at the Institute meeting, the following "votes" from our old town records may not be uninteresting. Additional information is given in the Report, prepared some years ago by Judge Endicott, then City Solicitor, upon the Neck lands. The "Blockhouse" stood about on the site of the late pound at the head of the Neck, and the land shore was known as the "Blockhouse Field" into this

²⁰ So-called "Field Meetings" for the regulation of Common Lands, used to be held in Connecticut, see Lambert, New Haven, 96-7, and of necessity must have existed in the "Perambulation" and "Division" of Salem Commons, to say nothing of the associate planting and harvesting of Common Fields. But the Field Meetings of the Essex Institute are not the direct continuation of the earlier Salem institution, although they are, perhaps, the outgrowth of the same original idea; for the Field Meetings of English scientific societies, which suggested the Field Meetings of the Essex Institute (see Bulletin of the latter, i, 89), are themselves the cultivated product of the old English instinct for open air assemblies. The name Field Meeting, actually surviving in its original sense in this country, if not also in England, is sufficient proof of this view.

century. It belonged to the heirs of Benjamin Ives, who sold it to their kinsman Richard Derby.

As to the acres "sett a Part" for the use of the ministry . . . for pasturage, this privilege seems to have been commuted later for a money payment, as Dr. Bentley records being waited upon by a farmer from Danvers, who brought him rent for the use of the "Minister's Field," much to the good divine's surprise, as he had previously known of no such perquisite.

"Att a Meeting of the Proprietors of the Lands lying in Comon In the Town of Salem, held at the Meeting-house in the first Parrish In Salem November the Twenty-Second Day one Thousand Seaven Hundred and Fouerteen being Legally warned

Voated That Coll'o Samuuell Browne Esq'r is Chosen Moderator for the Meeting.

Voated That the Returne of the Committe who were Appointed to Receive the Claims to the Comon Lands In Salem as Itt is entred on the other Leafe Backward is Received allowed and approved.

Voated That whereas there are Severall Claims nott yett fully made out to thee Committee, and others who have Neglected to bring in their Claimes: Therefor for Compleating the same That the Proprietors doe grant further Liberty to the Committee for fouer or five months next Comeing to Receive & Enter all such further Rights and Claimes as any person may have to make that none may be excluded that have Right and that Notifications be by them Accordingly Posted up in the most Publick Places in the three several Parrishes of the time and place of the Committee's Meetings.

Voated That there be sixty Acres Granted for the use of the Poor of this Town and such others as are Livers in the Town but not Privileged to A Right in the Comon Lands and the same to be for a Cow Pasture: To be allowed Three Acres to A Cow the selectmen from year to year to Propose and allow the persons so to be Privileged and they are to be such as have a cow of their own to keep.

Voated That Winter Island be wholly Reserved and Granted for the Use of the Fishery, and such shoremens as Dry fish there who live in the Town that pay an acknowledgment or Rent of five shillings per annum for a Room to dry fish for a fishing vessell and such as live in other Towns who come and dry fish there shall pay an acknowledgment or Rent of Twenty Shillings per annum for a fish room for each vessell: To be lett by the Selectmen of the Town of Salem yearly and

the rents to be pd into the Town Treasurer for the use of the Town: the Hirers to fence in the same att their own charge.

Voated That the Neck of Land to the Eastward Part of the Blockhouses be Granted and Reserved for the use of the Town of Salem for a Pasture for Milch Cows and Rideing Horses, to be fenced at the Townes charge and lett out yearly to the Inhabitants of the Town by the Selectmen, and no one Person be admitted to put into said Pasture in a sumer more than one milch Cow or one Rideing Horse, and the whole number not to exceed Two Acres and a half to a Cow and fouer Acres to a Hors, the Rent to be paid into the Town Treasurer for the Time being for the use of thee Town of Salem.

Voated That there be Tenn acres of the Comon Lands sett a Part and Reserved for the use of the Ministry in the body of the Town for Pasturage, and five Acres more for the Village Precinct Ministry and five acres more for the Middle Precinct Ministry in suiteable and convenient places for them.

Voated That there be about Fouer Hundred Acres on the moste remote part of the Town towards or on the west end of Dogg Pond Rocks and Hills adjoining to Linn Line where there may be Last Damage to the known Proprietors to be Reserved for any such as may come and make out any Right or Claime after the first day of June next ensuing.

Voated That all Dwelling Houses built in thee Town of Salem since the year one Thousand Seaven Hundred and Two to this day being the 22d day of November 1714 Bee and hereby are admitted to and allowed a Right in the Comon Lands in Salem.

Voated That all the Comon Lands in Salem not otherwise disposed off bee measured by an Artist and Returned to the Committee who are desired to gett the same done.

Voated That the said Comon Lands be ffenced, and stinted or divided to and amongst the Proprietors of said Comon Lands in Proportion to their Rights and According to Quality as neer as may bee that have or shall make out their Rights before the first day of June Next ensuing as hereafter may be agreed on by the major part of the Propriety.

Voated That the Committee who were Chozen to Receive the Claimes to the Comon Lands or the major part of them are ordered and Impowered to Sell and dispose of some small Pieces and Stripe of the Comon Lands in this Town of Salem as may be sutficient to defray the Necessary Expences of the Committees and the charge of measuring the saide Comon Lands."

XI

THE

GENESIS

OF A

NEW ENGLAND STATE

(CONNECTICUT)

"There was only one thing dearer to him [the New Englander] than his township — his hearth. The 'town' was as ancient as the neighborhood, and older than the county; his great-grandson knows that it is much older than the State, or the Union of the States.— *E. G. Scott*.

"In this part of the Union [New England] the impulsion of political activity was given in the townships; and it may almost be said that each of them originally formed an independent nation. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the State."— *De Tocqueville, (Reeve's Trans.)*.

"Each New England State may be described as a confederacy of minor republics called towns."— *Palfrey*.

"The inhabited part of Massachusetts was recognized as divided into little territories, each of which, for its internal purposes, constituted a separate integral government, free from supervision."— *Bancroft*.

● *matre pulchra filia pulchrior:*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

XI

THE

GENESIS
OF A
NEW ENGLAND STATE
(CONNECTICUT)

Read before the Historical and Political Science Association, April 13, 1883

BY ALEXANDER JOHNSTON, A. M.

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THE
GENESIS OF A NEW ENGLAND STATE
(CONNECTICUT)

In the new interest which has sprung up of late years in the institutional history of the United States, it is a little strange that the territorial forms and features, the bodies, of the States themselves are usually left so far out of account. It may be that this neglect has come from their comparative constancy of outline. It is easy to trace most of the internal workings of the State to the town system or its equivalents, and to accept them as a purely natural outgrowth. But it is just as easy to see that the external outline of New York, Illinois, or Texas has, from a very early period, been much the same as at present, and to accept it as artificial, as imposed on the State spirit by some superior power.

And it must be confessed that this distinction holds good as a general rule. Each of our States has had, throughout its history, a remarkable uniformity of feature. There is comparatively little of that breaking up and reuniting, that shooting out of a crystal here, or disappearance of a limb there, which gives the idea of natural growth in a French kingdom, while it makes it difficult to say just where the growth took permanent shape. Our States, we might almost say, came into the world full grown, like Minerva. Even the Massachusetts towns, the accepted exemplars of their class, found their Commonwealth boundaries waiting for them when they came into existence, and conformed to them. In the original States there is usually a certain sequence of events:

a grant of territory by the King to a great mercantile company or court favorite; a subsidiary, or an entirely new, grant to actual colonizers; and the location of the colony with fairly, if clumsily, defined boundaries, which have continued substantially the same down to our own day. In the States subsequently formed there is a quite parallel sequence of events: the acquisition of jurisdiction by the nation; the establishment of territorial boundaries by Congress; and the erection of a State within the external limitations already imposed. Of course, the general idea will not bear minute examination: all the States have had their variations of outline, some of them pregnant with significance; and the historical geography of the United States is a field where some worker will yet find a rich and virgin soil. Nevertheless it remains true that the individuality of the future State is sufficiently constant from its first connection with human interest, history and government to give good reason for considering it in the beginning as a human creation rather than a natural growth.

We look, then, as a general rule, to the will of the governing power of a colony for the body, the territorial form, of a township, while we look to the Germanic heredity of the people for its spirit; we look to the town spirit for the spirit of the future State, and to the will of a King or of a Congress for its body, its territorial form and boundaries. It is the purpose of this article to direct attention to one of the few exceptions to this general rule, the present State of Connecticut,* a State which was born, not made, which grew by natural accretion of townships, which formed its own government, made its own laws, engaged in its own alliances, fought

* Rhode Island and Vermont are the other exceptions, and as well deserve examination. We can hardly include Plymouth among the exceptions, for that colony only claimed individuality by charter purchase; nor Texas, whose admission to the Union was a flagrant violation of every precedent of State origin.

its own wars, and built up its own body, without the will of King, Kaiser, or Congress, and which, even at the last, only made use of the royal authority to complete the symmetry of the boundaries it had fairly won for itself.*

TERRITORIAL CLAIMS.

The accepted story of the transmission of the title to the jurisdiction of Connecticut is very simple. The soil was a part of James I.'s grant to the Council of Plymouth; a part of the smaller grant to the Earl of Warwick in 1630 by the Council of Plymouth; a part of the still smaller grant to Viscount Say and Sele, Lord Brooke, and others in 1631 by Warwick; and the territory, as it now stands, was confirmed to the colony of Connecticut by Charles II.'s charter of 1662, with the consent of the survivors of the last named grantees. Minor difficulties, such as Fenwick's troublesome claim under the Say grant, were bought off by the colony; the Indian possessory title was extinguished by purchase and conquest, and the colony's chain of title to its own territory seemed to be without a weak link. In that case, there would have been nothing out of the ordinary in the Connecticut colony, and

*AUTHORITIES IN GENERAL: Trumbull's *Colonial Records of Connecticut*; Hoadley's *Colonial Records of New Haven*; Bowen's *Boundary Disputes of Connecticut*; Trumbull's *History of Connecticut*; Hollister's *History of Connecticut*; Dwight's *History of Connecticut*; Peters' *General History of Connecticut* (McCormick's reprint of 1877); Atwater's *Colonial History of New Haven*; Bacon's *Ecclesiastical History of Connecticut*; Fowler's *Local Law in Massachusetts and Connecticut*; Savage's *Winthrop's New England*; Brodhead's *History of New York*; O'Callaghan's *History of New Netherland*; Thompson's *History of Long Island*; Wood's *First Towns of Long Island*; Holland's *History of Western Massachusetts*; Hartley's *Hartford in the Olden Time*; Stiles's *History of Ancient Windsor*; Hall's *History of Norwalk*; Huntington's *History of Stamford*; Caulkins's *History of New London*; Mead's *History of Greenwich*; Howell's *Early History of Southampton, L. I.*; Bond's *History of Watertown, Mass.* References are made to the author's name, except in the case of records.

the formation of its territorial body would have followed the general rule.

But there was a weak link, or rather a non-existent link, the grant to Warwick: he who looks for it will look in vain. Trumbull and Dwight* assume that the Say and Sele grant was really from the Council of Plymouth, of which Warwick was the President; but the Say and Sele grant† is, by its terms, from Warwick personally, and the Council of Plymouth is not even named in it. Hollister‡ takes a much more tenable ground: he admits that no trace can be found of a grant to Warwick, but assumes that such a grant must have been made, since Warwick would not otherwise have ventured to make the Say and Sele grant. Peters§ scouts the notion of a grant to Warwick, and taunts the colonial government with its inability to show any original title. Bancroft|| and other general authorities state the grant to Warwick without noting any doubt as to its validity, and it is generally accepted without question as the basis of Connecticut's territorial claims, subsequently confirmed by the charter.

On the other hand, not only is it evident that the original settlement of Connecticut was legally a sheer intrusion, in absolute disregard of the paper title on which it afterwards professed to rely, but the Plymouth Council itself did not recognize the Warwick grant, or the claims of the Say and Sele associates under it. On the contrary, when it divided

*1 *Trumbull*, 27; *Dwight*, cap. 1.

†It is given in 1 *Trumbull*, 495.

‡1 *Hollister*, 20.

§*Peters*, 27. "The Governor and Company of Connecticut gave a formal answer, setting up a title under the Earl of Warwick, who, they said, disposed of the land to Lord Say and Sele and Lord Brooke, and the Lords Say and Brooke sold the same to Fenwick, Peters, and others. The Earl of Arran answered that, when they produced a grant from the Plymouth Company of those lands to the Earl of Warwick, it should have an answer. But the colony was silent."

||1 Bancroft's *United States*, 395.

the remaining property in the soil among its members in 1635, before surrendering the jurisdiction to the King, it granted the territory between the Narragansett and Connecticut rivers to the royalist Marquis of Hamilton, and recorded the grant. This was the only Connecticut grant, up to the charter, which came from a source having an ostensible power to grant, and it became obsolete by non-user, since the royalist patentee was unable to make any attempt to colonize under it until colonization was completed without his assistance.* On the other side of Long Island Sound lay the fine territory of Long Island. This was covered by a royal grant to the Earl of Stirling in 1635; but the grantee made no attempt to assert any rights of jurisdiction, and his grantees had at first as open opportunity as the settlers on the mainland to erect independent town republics.†

The nearest approach to the truth seems to be that an informal, and consequently invalid, grant of some kind was made to Warwick, and that the original colonists, in their subsequent search for a paper title, took this as the best one available to them, though they had never respected it in practice. They were in no position to feel or assert any pride in that which makes their colonization noteworthy, the absence of an original patent. They would have asserted the Hamilton patent with equal warmth, if it had offered superior advantages; they chose the Warwick title because Say in 1662, while he was a republican, was yet a man of influence with the King, because he was a friend to New Englanders and disposed to assist any New England colony, and because he, the only surviving patentee, was too rich to care for quit rents and too old to be a dangerous ally. The truth is, that

* The Hamilton heirs, in 1683 and subsequent years, sued for a recovery of their alleged rights in the soil, but their suit was denied for the reason that it would be unjust to disturb long settled titles, and to give the heirs the benefit of the colonists' improvements. See 1 *Trumbull*, 380.

† *Thompson*, 117; 1 *O'Callaghan*, 210, 215; *Wood*, 6, 20.

the colonization and organization of Connecticut took place without the remotest connection with any paper title whatever, and that the Warwick title was purely an after thought to bolster up, by the forms of English law, the really better title of the colonists, acquired by their own purchases, conquests, and colonization. For the purposes of this article the Warwick and Say titles may be dismissed as practically both non-existent.

In 1634, then, the territory now occupied by Connecticut was a veritable No-Man's-Land. It had been granted, indeed, to the Plymouth Council, but the grant stood much on a par with a presentation of a bear skin whose natural owner was still at large in the forest. On the north, the Massachusetts boundary line had been defined by charter, though its exact location, in its whole length, was still in the air; on the east, the Plymouth purchase boundary was in the same condition; on the west, the asserted Dutch boundary of New Netherlands was in the same condition. The debatable ground between these unsettled boundaries offered one of the few opportunities which the town system has had to show how it can build up the body, as well as provide the spirit, for a State. A brief sketch of the manner in which the work was done will show that the towns, the natural outgrowth of the colonists' natures, formed their own colonial governments, pushed back the asserted boundaries of their neighbors, and obtained for themselves a local habitation and a name among commonwealths long before the King added the sanction of his royal assent to a work which had already been accomplished without it.

COLONIZATION.

Movement toward the vacant territory fairly began in 1633. In that year the Dutch established a trading house where Hartford now stands; William Holmes, a Plymouth skipper, sailed up the Connecticut river, passed the Dutch station, and established a trading house where Windsor now stands; and

a few Massachusetts traders and explorers had made their way through the wilderness to the same point. In the following year the first real settlements took place. In 1630 and 1632 the towns and congregations of Dorchester, Watertown and Newtown, in Massachusetts, had been founded, each by a distinct body of immigrants from England.* For various reasons they became dissatisfied with their location, and desired a removal further west. After a year's persistent application they wrung from the General Court a reluctant consent, conditioned on their remaining within the jurisdiction of Massachusetts.† In 1634, before the consent was given, a few persons from Watertown settled at Wethersfield. In 1635 the main Watertown body followed to Wethersfield, and the Dorchester body to Windsor; and in 1636 the main Newtown body removed to Hartford. At the end of the year 1636, these three townships, the nucleus of the Connecticut colony, contained about 160 families and 800 persons. In the following year they contained a sufficient number of fighting men to declare war against the Pequots, and almost annihilated that tribe.‡

In 1635, the Say and Sele associates built a fort at the mouth of the Connecticut river. In 1639, Colonel George Fenwick, the only one of the associates who showed any disposition to urge the claim, brought colonists to Saybrook, or Seabrook, as the fort was often called, and it kept up an independent existence for some years. Fenwick was treated by the Connecticut colonists with the deference due to a possibly formidable rival. In 1644 various reasons recalled him to England, and he sold Saybrook to the Connecticut colony. The equivalent was to be certain tolls upon vessels passing the fort, and they netted Fenwick about £1,600. In return he transferred the fort and promised, "if it came into his

* 1 Mather's *Magnalia*, 75.

† 1 Savage's *Winthrop*, 167.

‡ See the Connecticut authorities.

power," to transfer all the land from Saybrook to the Narragansett river. This agreement was never executed, but it quieted the only one of the Say and Sele associates who had shown any disposition to interfere with the pushing and ambitious Connecticut colony. Saybrook now became a Connecticut town.*

In 1637 the wealthiest body of immigrants that had yet come from England arrived at Boston.† They resisted all inducements to settle in Massachusetts, and in 1638 founded a colony of their own at what is now New Haven. Their title rested entirely on purchase from the Indians, as did all their subsequent extensions. When their stronger neighbor, the Connecticut colony, by its Fenwick purchase, acquired a *pseudo* title under the Say and Sele grant, the New Haven colony at first showed signs of a disposition to assert the Stirling grant as perhaps giving it some kind of a paper title beyond its mere purchases on Long Island;‡ but it soon settled back, for its right to existence, upon its Indian purchases and its recognition as a member of the New England Union in 1643.§

There were thus, in 1638, three independent colonies within the present limits of Connecticut. One of them, the Saybrook colony, rested on a paper title, which rested on nothing and was never perfected. The other two, the survivors after 1644, had not even a baseless paper title to rest upon. Both were as perfect examples of "squatter sovereignty" as Douglas could have asked for. Without a shadow of reliance upon authority, they formed their own governments, *proprio vigore*, made war, peace and alliances, levied taxes, and collected customs. In 1643 they united with

* *Dwight*, cap. 12. The agreement is in 1 *Conn. Rec.*, 266.

† *Atwater*, 80.

‡ 2 *New Haven Rec.*, 300. "Our title to those lands from the Lord Starling."

§ See New Haven authorities.

Plymouth and Massachusetts Bay in the New England Union. In 1650 they joined in the treaty at Hartford with Governor Stuyvesant, which put the boundary between New York and Connecticut * very much as at present, except that it was a straight line throughout, and continued across Long Island from Oyster Bay to the Ocean. Before the charter was granted, Massachusetts † had agreed to a boundary line not very far from that which was ultimately settled; and as Massachusetts claimed the territory on the east, the modern State of Rhode Island, the limits of the commonwealths were fairly settled. Let us see how their towns developed them, and how they treated their towns.

THE CONNECTICUT COLONY.

It must be noted that these Newtown, Watertown, and Dorchester migrations had not been altogether a simple transfer of individual settlers from one colony to another. In each of these migrations a part of the people was left behind, so that the Massachusetts towns did not cease to exist. And yet each of them brought its Massachusetts magistrates, its ministers (except Watertown), and all the political and ecclesiastical machinery of the town; ‡ and at least one of them (Dorchester) had hardly changed its structure since its members first organized in 1630 at Dorchester in England. The first settlement of Connecticut was thus the migration of three distinct and individual town organizations out of the jurisdiction of Massachusetts and into absolute freedom. It was the Massachusetts town system set loose in the wilderness.

At first the three towns retained even their Massachusetts names; and it was not until the eighth court meeting, Feb-

* 1 *Brodhead*, 519.

† *Bowen*, 17, (map).

‡ 1 *Bond*, 980; *Hartley*, 49; *Stiles*, 25 (note).

ruary 21, 1636(7), * that it was decided that "the plantaçon nowe called Newtowne shalbe called & named by the name of Harteforde Towne, likewise the plantaçon now called Watertowne shalbe called & named Wythersfeild," and "the plantaçon called Dorchester shalbe called Windsor." On the same day the boundaries between the three towns were "agreed" upon, and thus the germ of the future State was the agreement and union of the three towns. Accordingly, the subsequent court meeting at Hartford, May 1, 1637,† for the first time took the name of the "Genrall Corte," and was composed, in addition to the town magistrates who had previously held it, of "comittees" of three from each town. So simply and naturally did the migrated town system evolve, in this binal assembly, the seminal principle of the Senate and House of Representatives of the future State of Connecticut. The Assembly further showed its consciousness of separate existence by declaring "an offensive warr ag^t the Pequioitt," assigning the proportions of its miniature army and supplies to each town, and appointing a commander. In June it even ordered a settlement to "sett downe in the Pequioitt Countrey ‡ & River in place convenient to maynteine o^r right y^t God by Conquest hath given to us." So complete are the features of State-hood, that we may fairly assign May 1, 1637, as the proper birthday of Connecticut. No King, no Congress presided over the birth: its seed was in the towns.

January 14, 1638 (9), the little Commonwealth formed the first American Constitution, § at Hartford. So far as its pro-

* 1 *Conn. Res.*, 7.

† 1 *Conn. Rec.*, 9.

‡ The Pequot Country was, in general terms, the south-eastern part of the State, east of the Connecticut river. Massachusetts claimed a share in the rights of conquest, but Connecticut never relaxed her hold upon it, and the charter gave her a formal approval of her claim.—*Bowen*, 26 (map).

§ 1 *Conn. Rec.*, 20.

visions are concerned, the King, the Parliament, the Plymouth Council, the Warwick grant, the Say and Sele grant, might as well have been non-existent: not one of them is mentioned. It is made, according to the preamble, on the authority of the *people* dwelling on "the River of Connectecotte and the Lands thereunto adioyneing;" its objects are to establish "an orderly and decent Gouverment," which should "order and dispose of the affayres of the people," and to maintain "the liberty and purity of the gospell" and "the disciplyne of the churches;" and for these purposes its authors "doe therefore assotiate and conjoyne our selues to be as one Publike State or Coimonwealth." The only sovereignty recognized in the constitution or the oaths of office prescribed by it, is that of the people. It cannot, therefore, be said that the government of Connecticut was *formed* by the three towns, though it undeniably grew out of them and was conditioned on every side by their precedent existence. Its establishment has some parallels to that of the Federal Constitution one hundred and fifty years afterward. In both cases the constituent units, towns and States, never independent in fact before or after, were nominally independent before but not after. In both cases, while the units remained the same as before, the constitution was not framed by General Court or by Congress, but by an unprecedented body, a popular convention in the one case, a Federal Convention in the other. In both cases the new political creation succeeded to a part of the powers which the constituent units had before exercised. Here the parallel ceases: there was no occasion for any ratification by the towns, since their inhabitants had united in framing the constitution itself.

There were to be two "General Assemblies or Courts" yearly, in April and September: the former for the election of a Governor and other magistrates for one year; the latter "for makeing of lawes." A General Court was to consist of a Governor, Magistrates, and Deputies. Each town was to

nominate two persons as Magistrates; * and out of the whole number nominated the General Court was to choose by ballot not less than six for the next year, but might "ad so many more as they judge requisitt." The three towns were each to send four Deputies "to agitate the affayres of the Comonwealth;" new towns were to send Deputies according to their population. If the Governor and Magistrates at any time refused to summon a General Court upon petition of the freemen, the towns, through their constables, were to issue the summons, and in such case the Governor and Magistrates were to be excluded from the General Court. The election of local officers and the management of local affairs were left entirely to the towns, with an indefinite power of supervision in the General Court. "In wth said Generall Courts shall consist the supreme power of the Comonwealth, and they only shall haue power to make lawes or repeal thē, to graunt leuyes, to admitt of Freemen,† dispose of lands vndisposed of to seuerall Townes or p^{sons}, and also shall haue power to call ether Courte or Magestrate or any other p^{son} whatsoever into question for any misdemeanour, and may for just causes displace or deale otherwise according to the nature of the offence, and also may deale in any other matter that concerns the good of this comonwelth, excepte election of Magestrats, wth shall be done by the whole boddy of Freemen." This constitution was not only the earliest but the longest in continuance of American documents of the kind, unless we except the Rhode Island charter.‡ It was not essentially altered by the charter of 1662, which was practically a royal confirmation of it; and it was not until 1818 that the charter, that is, the con-

* These officers, the germ of the future Senate, exercised judicial powers in their towns; and, as the General Court grew stronger, it also appointed commissioners "with magestraticall powers" for the towns.

† In 1643 the General Court left the admission of freemen to a major vote of each town, retaining only a formal right of confirmation.

‡ Connecticut, 1639-1818; Rhode Island, 1663-1842.

stitution of 1639, was superseded by the present constitution. Connecticut was as absolutely a State in 1639 as in 1776.

In both the Connecticut and the New Haven colonies the General Courts not only made laws and pardoned offences against them, but exercised the judicial power on appeal from the Particular Courts, the magistrates of the towns. The records of both are cumbered with tedious civil and criminal suits, in which Connecticut provided for, and New Haven denied, trial by jury. But the essential difference between the two was, that Connecticut left to the towns a control over their civil and religious affairs which the more somber tone of New Haven denied. The early Connecticut town and its church were identical; * the officers and affairs of both were settled to the people's liking at one meeting; and the General Court interfered only to apportion taxes and decide differences. From the first appearance of a New Haven town, the General Court was always meddling. Connecticut gave the town system full and free play: New Haven aimed to be a centralized theocracy, responsible for the moral well being of its dependent towns. The consequence was that Connecticut rapidly outstripped her rival in the race for the formation of new towns and the appropriation of the No-man's-land around them. Her early Indian wars gave her extensive rights of conquest, which her restless citizens were not slow to perfect by settlement. Even the unchecked religious dissensions in her churches hastened the process of town formation by scattering new settlements governed by Connecticut notions. † Thus, long before the grant of a charter, Connecticut had

* In 1726, members of other sects than the Congregational having become numerous, the General Court allowed the formation of other churches. When this was done, the Congregational church took the legal name of "The Prime Ancient Society," and the town meetings were separated from it.

† A Wethersfield offshoot left the Connecticut colony, colonized Stamford, and very naturally became the most unmanageable of the New Haven towns.

hemmed her rival in by towns of her own, confined her to the territory around the original settlement, and left her no room for expansion.

Connecticut histories state that the towns were "incorporated" in 1639 by the General Court. The only incorporation was a series of general acts, passed October 10, 1639, the first after the adoption of the constitution; but these were only a formal legislative confirmation of recognized town privileges. They enacted * that "the Townes of Hartford, Windsore, and Wethersfield, or any other of the Townes within this jurisdiction," should have power to dispose of vacant lands, choose their owu officers and courts, and control their local affairs; and they confirmed to the towns the probate jurisdiction and control over the records of real estate transfers which they still retain. They speak also of the towns' "lymitts bounded out by this court." In the case of neighboring towns, particularly where there were any differences of opinion, the court always exercised this power of settling town boundaries, beginning in the next year, 1640.† The boundaries of the new towns of Farmington and New London were laid out by the court in 1645 and 1649,‡ and this method of locating a new town was thereafter increasingly more frequent until 1662. After that year the General Court's authority in the matter became exclusive.

But, as a general rule, before the charter was received, the town boundaries were fixed by agreement of the inhabitants or by Indian purchase, and the tacit recognition of the General Court and its agents. The "incorporation" of a new town usually consisted in such fatherly advice as was given in 1650 to the persons intending to settle Norwalk: they are directed to make all preparations for self-defence, to divide

* 1 *Conn. Rec.*, 36.

† 1 *Conn. Rec.*, 47.

‡ 1 *Conn. Rec.*, 133, 185. But in New London local government had already been begun by the people. *Caulkins*, 56.

up the land subject to the rectification of "aberrations" by the General Court, and to "attend a due payment of their proportions in all publique charges."* The organization of a primitive Connecticut town was thus altogether popular, sometimes with, sometimes without, the General Court's express control.

As soon as the population of any defined purchase or grant became numerous enough to demand local government, a general meeting elected a constable and two or more townsmen, ordered the erection of a pound and (generally) of a minister's house, and took charge of allotments of land. As soon as the little town gained some consistence, the General Court's agents appeared with a demand for the town's "rate" or statement of persons and property, for purposes of taxation. For these purposes the constable was a Commonwealth's officer as well as a local officer, and through him and the magistrates or commissioners the town was attached to the Commonwealth.†

As soon as the rate showed a sufficient number of freemen, the town might send a Deputy to the General Court; but this troublesome privilege was at first unused. Until 1647 the twelve Deputies from the three original towns sufficed to make laws and lay taxes for all the towns.‡ Even when the number of Deputies begins to increase, the towns which they severally represent are not named. But the growth of the Connecticut town system may be seen by this steady increase in the number of Deputies after 1644, when Southampton, L. I., was admitted as a town. In May, 1647, the number of Deputies rose from 12 to 18; in May, 1649, to 20; in May, 1651, to 22; in May, 1654, to 24; in May, 1655, to 25; and in February, 1656(7), to 26. At first only the three

* In 1651 the General Court formally voted that Mattabezeck (Middletown), and Norwalk should be towns, and choose constables.

† The process may be followed in detail in the local histories among the authorities.

‡ Once, in 1645, thirteen were present.

original towns appear in the "rates." In 1645, Stratford, Fairfield, Southampton, L. I., Saybrook, and Farmington appear in the rates. In 1653, Norwalk, Middletown, and New London close the list of formal additions to the rate list of towns, until the advent of the charter. The other smaller towns, whose independent existence is constantly recognized in the General Court proceedings, were rated as parts of these principal towns.

The natural expansiveness of the free Connecticut town system was exemplified on Long Island.* After 1662 the colony's claim to that island rested on the charter's grant of the "island's adjoining" its coast: before that date, its claim was exactly on a par with its claim to the mainland, the voluntary action of the towns. In 1635 the King had granted Long Island to the Earl of Stirling. He seemed to care nothing for its jurisdiction; and, as purchases were made, the settlers formed towns and applied for admission to Connecticut.† Southampton was admitted in 1644, Easthampton in 1649, Setauket in 1658, Huntington in 1660, and Southold and the other English towns in 1662, after the grant of the charter. In 1664 the Duke of York, having bought the Stirling patent, extended the jurisdiction of New York over Long Island, and Connecticut was unable to resist him.‡ In 1673, when the Dutch recaptured New York, the English towns on Long Island again took shelter with Connecticut; but in the following year the Duke was again put into possession of his province, and Connecticut finally lost Long Island.§

During its period of independent existence, the Connecticut commonwealth, as has been said, gave the town system full

* Springfield, Mass., was also for a time claimed as a Connecticut town, 1 *Holland*, 80-33. More than a century afterward, Connecticut's claim to a part of Pennsylvania was only asserted by means of the continued vitality of her town system, and its extension to Wyoming.

† Southold entered the New Haven colony, by purchase.

‡ 1 *Brodhead*, 726.

§ *Wood*, 24-28.

and free play. The instances of interference with local government are very few. In October, 1656, the towns were forbidden to entertain "Quakers, Ranters, Adamites, or such like notorious heretiques," under penalty of £5 per week. In February, 1656(7), the General Court limited the right of suffrage by declaring that the phrase "admitted inhabitants" in the constitution meant only "householders that are one & twenty yeares of age, or have bore office, or have £30 estate."* This was reaffirmed in 1658. In March, 1657(8), it was ordered that no persons should "imbody themselves into church estate" without consent of the General Court and approbation of their neighbor churches. With these exceptions, Connecticut towns did very much as they pleased in civil and religious affairs, provided they paid their rates promptly.

NEW HAVEN COLONY.

June 4, 1639, the planters at Quinnipiack (New Haven) met and framed a civil government which was at least closely bound up with the ecclesiastical government.† They agreed that the Scriptures should be the law of the town; that only church members should be burgesses and choose magistrates from their own number; that twelve burgesses should now be chosen by general vote; and that these should choose seven of their number to be the seven pillars of the church and the first General Court. In the following year the name of the town was changed to New Haven. The management of public affairs by the General Court was of the most austere character. Sumptuary laws and acts to regulate prices and wages were immediately passed; and the authority of the church was upheld by punishing criminally such as did "expressly crosse y^e rule" by venturing to "eate, drinke, &

*1 *Conn. Rec.*, 293.

†1 *New Haven Rec.*, 11. *Bacon*, 24, argues to the contrary; but see *Atwater*, 94.

to shew respect unto excommunicate persons." This system did not at first provoke any resistance in the original offshoots* from New Haven, the towns of Milford, Guilford, and Branford, whose people were wholly at one with those of New Haven. But it was a constant source of heart-burning in the more distant acquisitions of Stamford and Southold;† it checked any extension of the New Haven jurisdiction outside of these six towns; and in the final struggle between Connecticut and New Haven, it proved to be the latter's vulnerable point.

New Haven extension was altogether by purchase; and, when the union of the towns was consummated, the General Court controlled the town organizations much more minutely than Connecticut attempted to do. Constables and magistrates for the new towns were appointed at first by the General Court, and the right of confirmation at least was always insisted upon, even when the towns began to assert their own right of choice. Some symptoms of weakening were shown as internal dissensions grew warmer. In 1656 two constables were appointed for Stamford, but one of them was not to serve if the freemen of that town were not willing, "though the court be of another minde."‡ But, as a general rule, all the towns were to follow implicitly the civil and ecclesiastical methods of the parent town; even the officers of their "trayned bandes" were to be church members, approved by the magistrates whom the General Court had appointed or confirmed.

In this manner five dependant or co-ordinate towns were formed.§ The neighboring towns of Milford and Guilford, bought in 1639, were independent at first, but were admitted to the General Court in 1643. Stamford, bought in 1640,

* *Fowler*, 68.

† *Huntington*, 73; *Atwater*, 387.

‡ 2 *New Haven Rec.*, 173.

§ Unsuccessful efforts were also made to colonize in Delaware Bay.

was admitted in 1641. Southold, L. I., bought in 1640, was admitted in 1649. Greenwich was also bought in 1640, but the Dutch seduced the purchasing agents into making it a Dutch town.* In 1650, by the treaty of Hartford, it was restored to New Haven and became a part of Stamford. The last of the towns, Branford, granted to a new colony in 1640, was also independent at first: it was admitted in 1651. In 1656 and 1659 Huntington, L. I., applied to be admitted, but was refused because it insisted on the right of trying all its civil cases, and all its criminal cases not capital.† All the New Haven towns were thus restricted to the same mould. One trivial exception was made in the case of Milford, which had made voters of six persons, not church members, before its admission. This was allowed to stand, after much negotiation, on condition that it should never be repeated, and that the six interlopers should never hold office.

October 27, 1643, the General Court, which was now composed of the Governor and the Magistrates and Deputies of New Haven, Stamford, Milford, and Guilford, adopted a series of "foundamentall orders" as a constitution.‡ All persons were to have the rights of "inheritance and commerce," but only church members were to be burgesses, vote, or hold office. The towns were to choose their own courts, but these were only to try civil cases under £20, or inflict punishment of "stocking and whipping," or a fine of £50. All higher cases, and appeals in the lower cases, were reserved to the General Court. The free burgesses were to choose the Governor and other commonwealth officers, those at a distance voting by proxy. The Governor, the Magistrates of each town, and two Deputies from each town, were to meet at New Haven in General Court annually in April and October. The General Court was to maintain the purity

* *Mead*, 28.

† 2 *New Haven Rec.*, 237, 299.

‡ 1 *New Haven Rec.*, 112; *Fowler*, 71.

of religion and "suppress the contrary," make and repeal laws, require their execution by the towns, impose an oath of fidelity upon the people, levy rates upon the towns, and try causes according to the Scriptures. In April, 1644, "the laws of God, as they were delivered by Moses," were adopted as the criminal code of the Commonwealth.*

The records of the General Court from 1644 until 1653 have disappeared, but it is evident that internal difficulties had taken shape during the period covered by the break. In 1653 the General Court remarked with asperity that it had "heard sundrie reports of an vnsatisfying offensive way of cariag in some at Southold, as those wth grow weary of that way of civill gouernment wth they haue for diners yeares (and wth much comfort and safty) lined vnder," and warned the offenders to abate the scandal.† Soon afterward the Governor called attention to a public appeal to the people "to stand for their libberties, that they may all haue their votes and shake of the yoake of gouernmt they haue bine vnder in this jurisdiction." In the next year there were incipient rebellions in Southold and Stamford, and it was ordered that "a serious view be made" in each town, and the oath of fidelity be administered to all the inhabitants. Several of the Southold people were haled before the Court for seditiously declaring that this was "a tyrannicall gouern^t." Two years afterward the Court complained that men not church members had been allowed to vote in some of the towns, contrary to the "foundamentall orders," and directed that "these orders be exactly attended." The Southold constables were specially instructed to make a "reformation" in that town.

This persistent attempt to keep the towns in pupillage, and the political power in the hands of church members, contrasted very unfavorably with the policy of Connecticut,

*1 *New Haven Rec.*, 130.

†2 *New Haven Rec.*, 17.

where, after 1643, the General Court admitted as voters all who were approved by a major vote of any town, with a general property qualification. The struggle was between a free town system and a system of shackled towns; and the latter was at a disadvantage. A strong Connecticut party had grown up before the charter was granted, not only in Stamford and Southold, but in Guilford and Milford. In 1661 several of the magistrates refused to take the oath of fidelity; and the spirit of disaffection had eaten so deep that, if we may accept the unchallenged assertion of the Connecticut General Court, the annihilation of the New Haven jurisdiction, and the absorption of its territory into Connecticut, were urged by the "cheife in gouernment" at New Haven in letters to Governor Winthrop.* This result, as accomplished by the charter in 1662, seems to have been only a hurrying of an inevitable catastrophe.

THE UNION.

The Restoration in England left the New Haven colony under a cloud in the favor of the new government: it had been tardy and ungracious in its proclamation of Charles II.; it had been especially remiss in searching for the regicide colonels, Goffe and Whalley;† and any application for a charter would have come from New Haven with a very ill grace. Connecticut was under no such disabilities; and it had in its Governor, John Winthrop, a man well calculated to win favor with the new King.‡ The General Court had a clear perception of its proper line of action, and followed up its advantages with promptitude, energy, and success. Its objects were to obtain from the King, in the first flush of the Restoration, a confirmation of the privileges which it had

* 2 *New Haven Rec.*, 536; 1 Mather's *Magnalia*, 78.

† See Secretary Rawson's letter to Gov. Leete in 2 *New Haven Rec.*, 419.

‡ 1 *Hollister*, 207.

evolved out of a free town system, and to remove peaceably the obstacle to complete State-hood which was imposed by the independent position of New Haven. In March, 1660, the General Court solemnly declared its loyalty to Charles II., sent the Governor to England to offer a loyal address to the King and ask him for a charter, and laid aside £500 for his expenses. Winthrop was successful, and the charter was granted April 20, 1662.

The acquisition of the charter raised the Connecticut leaders to the seventh heaven of satisfaction. And well it might, for it was a grant of privileges with hardly a limitation. Practically the King had given Winthrop *carte blanche*, and allowed him to frame the charter to suit himself. It incorporated the freemen of Connecticut as a "body corporate and polittique," by the name of "The Governor and Company of the English Collony of Conecticut in New England in America." There were to be a Governor, a Deputy Governor, and twelve Assistants (hitherto called Magistrates). The Governor, Assistants, and two Deputies from each town were to meet twice a year in General Assembly, to make laws, elect and remove Governors, Assistants and Magistrates. The people were to have all the liberties and immunities of free and natural subjects of the King, as if born within the realm. It granted to the Governor and Company all that part of New England south of the Massachusetts line and west of the "Norroganatt River, commonly called Norroganatt Bay" to the South Sea, with the "Islands thereunto adioyneinge." These were the essential points of the charter,* and it is difficult to see more than two points in which it altered the constitution adopted by the towns in 1639. There were now to be two deputies from each town; and the boundaries of the Commonwealth now embraced the rival colony of New Haven. The former change had already been recommended without

* See the charter in 2 *Conn. Rec.*, 3; and the process of obtaining it in 1 *Trumbull*, 289, and 1 *Hollister*, 202.

result by the General Court; and the latter was longed for by all the leaders of the colony, and was the objective point of the move for a charter. The fundamental point of the constitution, the supreme power of the General Court, was unchanged. Both Connecticut and New Haven had fixed their boundaries of their own will, or by agreement with their neighbors. But the separate existence of the smaller Commonwealth marred the fair proportions of the Commonwealth, in its natural outline, and Connecticut threw the King's sovereignty into her own scale in order to effect a peaceable removal of an obstacle to her complete State-hood. The town spirit built the State, and the King added his benediction to the structure.

New Haven did not submit without a struggle, for not only her pride of separate existence but the supremacy of her ecclesiastical system was at stake. For three years a succession of diplomatic notes passed between the General Court of Connecticut and "our honored friends of New Haven, Milford, Branford, and Guilford." Southold had promptly accepted the charter, and there was a strong party in Stamford and Guilford which desired to take the same course. To strengthen this party, Connecticut appointed or confirmed constables and magistrates in the towns named, and a war of annoyances was kept up on both sides. In October, 1664, the Connecticut General Court appointed the New Haven magistrates commissioners for their towns, "with magistraticall powers," established the New Haven local officers in their places for the time, and declared oblivion for any past resistance to the laws.* In December, Milford having already submitted, the remnant of the New Haven General Court, representing New Haven, Guilford, and Branford, held its last meeting and voted to submit,† "with a *salvo jure* of our former rights and claims, as a people who have not yet

*1 *Conn. Rec.*, 437.

†2 *N. H. Rec.*, 549; *Atwater*, 516.

been heard in point of plea." The next year the laws of New Haven were laid aside forever, and her towns sent deputies to the General Court at Hartford.

One of the propositions made by Connecticut in 1663* was that the New Haven towns should be formed into a distinct county, with its own court. New Haven's refusal to unite on any terms caused this and the other propositions to fall through, and the union was finally perfected without any conditions. But the new General Court, in May, 1666, constituted and bounded the four counties of Hartford, New London, New Haven and Fairfield, and gave them separate courts† and, in the next year, grand juries. The county system of Connecticut is thus only an outgrowth of the union. In 1701 the General Court further voted that its annual October session should thereafter be held at New Haven. This provision of a double capital was incorporated into the constitution of 1818, and continued until in 1873 Hartford was made sole capital by constitutional amendment.

The General Court, in its new form, at once took on all the features of a power superior to the towns, and resting no longer on the towns' authority. The settlement of the boundaries of new and old towns at once became a peculiar field of the General Court; and, until the number of towns increased so far as to form a safeguard, regulation of, and interference in, the civil and ecclesiastical affairs of the towns was far more common and minute than before. In 1685-6 all the towns whose title rested on Indian purchase received patents therefor from the General Court. This step was, for many of the towns, the first real "incorporation:" it may be compared, *mutatis mutandis*, to the conversion of an allod into a feud.

It must, of course, be granted that the state of affairs in Great Britain during the years 1634-60 had very much to do

* 2 *New Haven Rec.*, 493.

† 2 *Conn. Rec.*, 34, 61.

with this opportunity of the town spirit to build up the form and fashion of a state in Connecticut. Chalmers * sneeringly says of the "little colony of New Haven" that it "enjoyed the gratifications of sovereign insignificance" until Charles II annexed it, without its consent, to Connecticut. On the contrary, the position of Connecticut was significant in the highest degree. With its neighbor commonwealth of Rhode Island, it held for over a century the extreme advanced ground to which all the other Commonwealths came up in 1775.† King and Parliament sustained the royal veto power over the enactments of other colonies; even Massachusetts lost the power to elect her own Governor; but Connecticut's position still kept alive the general sense of the inherent colonial rights which only waited for assertion upon the inevitable growth of colonial power. The charter of Connecticut was the key-note of the Revolution; and the terms of that charter are due, under God, to the free action of the town system transplanted into the perfect liberty of the wilderness.

* 1 *Revolt of the Colonies*, 53.

† *Fowler*, 101.

XII

LOCAL GOVERNMENT

AND

FREE SCHOOLS

IN

SOUTH CAROLINA

"Every parish is the image and reflection of the State."—*Thomas Erskine May*.

"The township appears in its ecclesiastical form as the parish or portion of a parish."—*Canon Stubbs*.

"The institutions of any community in the thirteen colonies . . . are more than a mere object of local interest and curiosity. They show us the institutions of the elder England, neither slavishly carried on nor scornfully cast aside, but reproduced with such changes as changed circumstances called for, and those for the most part changes in the direction of earlier times."—*Freeman*.

"It is the prerogative of self-government that it adapts itself to every circumstance which can arise. Its institutions, if often defective, are always appropriate; for they are the exact representation of the condition of a people, and can be evil only because there are evils in society, exactly as a coat may fit an ill-shaped person. Habits of thought and action fix their stamp on the public code; the faith, the prejudices, the hopes of a people, may be read there; and, as knowledge advances, each erroneous judgment, each perverse enactment, yields to the embodied force of the common will."—*Bancroft*.

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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History. — *Freeman*

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First Part read before the Historical Society of South Carolina, December 15, 1882.

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Local Government in South Carolina.

(THE PARISH, THE DISTRICT, AND THE COUNTY).

The history of the growth of local government in the Southern States presents characteristics which at once distinguish our local unit from that of the Eastern and Western States. In the South the county is the centre of political life. The schools, the roads, the poor, and other local matters are regulated by county officers. In the Eastern States and in many of the States of the Northwest, all such local questions are controlled by the towns* or townships. The political activity of Southern communities is, therefore, less minutely subdivided than elsewhere in the United States; and, as a consequence, there is more centralization in the management of local matters.

This great difference between the local machinery of the two sections of our country is, at first, very strange to the student of American institutions. And when he recalls the fact that the early settlers of Virginia and the Carolinas came from the same land as did the early settlers of Massachusetts and Rhode Island, he is, perhaps, even more impressed with the opposing characteristics of the local institutions of the South and those of the North. The causes of these peculiarities are many. There were the differences between the first settlements of the North and those of the South, and

* The term "town" is liable to mislead those who are only acquainted with the use of the word to express the idea of a larger collection of houses and inhabitants than a village. In the North the term is synonymous with township.

the differences between the settlers themselves. The colonists of the North, notably those of New England, were composed principally of religious refugees, united by the bonds of a common moral idea. Most of the colonists of the South came over simply as Englishmen who wished to better their condition. They were recruited from no particular rank in society. Churchman and dissenter, cavalier and roundhead sat about the same camp fire. Massachusetts was a colony; South Carolina, a province. Compact settlements were necessary on the one hand for the purpose of protection against foreign and domestic enemies; for the purpose of maintaining public worship; and for organizing the government of the infant State. The partial absence of any of these causes left it wholly to the choice of the Southern colonists whether they should found cities or settle in agricultural communities. Their patrons shielded them from the incursions of the red men; although deeply religious, like most genuine Englishmen, they lacked the zeal of fresh converts to a new creed; and their government was in a large measure provided for them. Difference of climate tended to increase the difference produced by these social and moral causes. The rigors of the Northern winters enforced the growth of cities and thickly settled communities. The mild climate of the South favored the cultivation of the soil and the isolation of estates.

There are, however, more points of resemblance between the beginnings of the colonies than are usually supposed. There are similarities of political structure which characterize not only all English settlements of this country, but which reach far back in the past history of our Teutonic race. By a kind of political *atavism*, old institutions re-appear in our history, now clearly and definitely outlined, now only faintly resembling their Germanic prototypes, but everywhere possessing those qualities which distinguish the polity of the Anglo-Saxon race wherever it finds a home.

Nowhere can this divergence from an original identity of political structure be better illustrated than in the develop-

ment of local government in South Carolina. The economic and social peculiarities of this State; its influence on other Southern States; and the successive changes which its constitution has undergone, make it, in many respects, a typical Southern commonwealth. It happens, that, though claimed by the Spaniards, named by the French, and settled by the English, South Carolina is an English colony in the fullest sense of that term; for, from England South Carolina received her people, her customs, her laws, and that ancient religious system which wove itself so thoroughly into her political texture during the early years of her provincial life.

By their charter, the proprietors of South Carolina were vested with great powers and privileges. These noblemen seemed to have cherished the idea that they were founding a mighty empire. The great philosopher, John Locke, who was a personal friend of one of the proprietors, the Earl of Shaftesbury, previously known as Anthony Ashley Cooper, was employed to frame a constitution for the government of the future province. Locke finished his labors in 1669, and presented his "Fundamental Constitutions." The form of government was amended by Shaftesbury. These fundamental constitutions had for their object the better government of the province, and were adopted in order "to avoid erecting a numerous democracy."* The province was erected into a county palatine, like that of Durham. The eldest of the Lord Proprietors was to be Palatine, and, at his death, the eldest of the seven surviving proprietors was to be his successor. The other officers were admirals, chamberlains, chancellors, constables, chief justices, high stewards, and treasurers. The whole province was divided into counties. Each county consisted of eight signiories, eight baronies, and four precincts, each precinct consisting of four colonies. The eight signiories were the share of the eight proprietors, and consisted of twelve thousand acres each. The baronies belonged

* Preamble of the Fundamental Constitutions.

to the nobility of the province, and also consisted of twelve thousand acres each. The nobility of the province were the "landgraves" and "cassiques." There was a landgrave for each county, and twice as many cassiques as landgraves. In every signiory, barony, and manor, its respective lord had power to hold a court leet for the trial of civil and criminal cases. Every manor consisted of not less than three thousand acres. Every lord of a manor enjoyed the same powers, jurisdictions and privileges which appertained to a landgrave or cassique in his baronies. County courts were erected in each county. These courts were composed of a sheriff and four justices, one from each precinct. There were also precinct-courts, each of which consisted of a steward and four justices of the precinct. Every jury consisted of twelve land owners, and a verdict was rendered according to the consent of the majority.*

Such in brief is the substance of this remarkable frame of government. It never went wholly into operation and was abrogated by the proprietors in 1693. It is chiefly interesting as showing the first attempt to provide a system of local government for the province. But time and experience illustrated that this could be successfully provided for only by the people themselves. The early methods of local administration in the province are wrapt in obscurity. The early acts of the provincial parliament† relative to the management of highways, the organization of the militia, the raising of revenues, and the punishment of various offenses against law and morality, are not now to be found. Only their titles have been preserved.

One of these old laws, the title of which is frequently encountered, reads as follows: "At a Parliament held at Charlestowne, at the house of Mr. Anthony Lawson, the

* Charters and Constitutions of the United States, part 2, pp. 1397-1408.

† The first assembly in the province was for several years known as the Parliament.

eighth day of December, 1691, Annoque Regni Regis et Reginae . . . tertio. An Act for the Better Observance of the Lord's Day, commonly called Sunday. Forasmuch as there is nothing more acceptable to Almighty God than the true sincere performance of and obedience to the most divine service and worship, which although at all times, yet chiefly upon the Lord's Day, commonly called Sunday, ought soe to be done, but instead thereof many idle, loose, and disorderly people doe wilfully profane the same in tipling, shooteing, gameing, and many other vicious exercises, pastimes and meetings, whereby ignorance prevails and the just judgment of Almighty God may reasonably be expected to fall upon this land if the same by some good orders be not prevented; Be it therefore enacted by the Pallatine and the rest of the Lords and absolute Proprietors of this Province, by and with the consent of the Commons in this present Parliament assembled, and it is hereby enacted by the authority of the same, that from and after the ratification hereof, all and every person and persons whatsoever shall on every Lord's Day apply themselves to the observation of the same,"* etc. This would seem to argue that the Puritans were not the only colonists who enforced the local observance of the Sabbath and church attendance.

The nearest approach to any system of local government beyond the limits of municipalities is found in the creation of the parishes. The parish was, of course, introduced after the establishment of the Episcopal church. But the establishment of the Episcopal church in the province was only brought about by stealthy innovations and in the face of much opposition. In 1698 a maintenance was settled by law on a minister of the Church of England at Charlestown.† This Act, however, did not encounter serious hostility owing to the popularity of the minister and the small sum voted

* Statutes at Large of South Carolina, Vol. II, pp. 68 and 69.

† Statutes at Large of South Carolina, Vol. II, p. 135.

him.* A few years later, in 1704, through the influence of the proprietors and civil officers, the Church of England secured a legal establishment, notwithstanding the fact that the Episcopalians had only one church in the entire province while the Dissenters had four. In this year a majority of representatives were sent to parliament who were members of the Church of England.

Soon after the organization of the provincial parliament the new members succeeded in passing a bill which virtually excluded all Dissenters from that assembly. But this oppressive measure was soon afterwards repealed. The Episcopalians, nevertheless, continued to rule the province. Laws were passed for the maintenance of ministers, the erection of churches and chapels, and the division of the counties into parishes.† The parishes were of various sizes and in 1706 their bounds were definitely set by law.

The principal officers of the parish were the rector, the vestrymen, the churchwardens, the overseers of the poor, the sexton, the clerk, the register, and the commissioners of roads. At the head of the spiritual welfare of the parish was the rector. During his ministration he could enjoy the use of the glebe-lands, the buildings of the parish (except one room in the rector's house at Charlestown, which was reserved for a parochial library), all the negroes that belonged to the parish with their increase, and the parish cattle with their increase. He also received a salary from the province varying in amount according to the church. The rector was chosen by the parishioners, but a vacancy was filled by the vestry which proceeded to an immediate election. No rector was allowed to marry parties contrary to the table

* Ramsay, Vol. II, pp. 2-10. Also for a very excellent history of the church in South Carolina, see Dalcho's Church History.

† Statutes at Large of South Carolina, Vol. II, pp. 232-246. Also Grimké's Collection of the Public Laws of South Carolina, pp. 11-12.

of marriages. He could not hold a seat in either branch of the legislative assembly.*

The duties of the vestrymen were both civil and ecclesiastical and were copied from the duties of the corresponding office in England. In the words of the law describing their qualifications and powers, the vestrymen were elected for the "promotion of the good laws of the Province and the easy despatch of parish business."† They were, moreover, to be "sober and discreet men." Their number, besides the rector, was at first nine and later seven, all residents of the parish. They were chosen yearly by the freeholders and taxpayers of the parish. The election was held on Easter Monday at the parish church. The parish church seems to have been both the civil and religious centre for transacting local affairs. On the doors of the church were posted all important public notices. After his election each vestryman was required to take the oath of office.

The next officer in the parish was the churchwarden. There were two of these in each parish. They assisted the vestrymen in keeping the parish buildings in order. In conjunction with the overseers of the poor, they had a general supervision of the pauper class of the parish. They also managed the parochial elections. The overseers of the poor were yearly nominated by the vestry. Rich people having poor relatives were compelled to assist them. The poor were relieved from various public monies and fines. A person who, in moving from one parish to another, might become a pauper, could be

* "The ministers of the gospel are by their profession dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their function, therefore no minister of the gospel or public preacher of any kind . . . shall be eligible either as governor, lieutenant governor, a member of the senate, house of representatives or privy council in this State."—Constitution of South Carolina of 1778, section XXI. This disqualification no longer exists.

† Statutes at Large of South Carolina, Vol. II, p. 290, sections XXVIII, XXIX, XXX, XXXI, and XXXII.

returned to the parish whence he came.* Poor children were bound out by the churchwardens and the overseers of the poor. A register was kept of the names of persons receiving aid. The churchwardens and overseers of the poor were to account yearly before the vestry for all money spent.† Neglect of duty was punished by a fine.

The sexton, the clerk, and the register of births were appointed by the vestry. They received a small perquisite attached to their office. Parishioners had a right to inspect the records of the parish at any time and to take exceptions to them, if they thought proper. In the parish register were contained all the deaths and christenings of parishioners, except those of negroes, mulattoes, and slaves.

The commissioners of the roads were elected by the freeholders of their respective parishes. In 1719, the parishes were made election districts and each parish sent representatives to the commons' house of Assembly. In some cases two

* Public Laws of South Carolina, p. 106, Section V.

† A few of the old Records and Registers of the parishes are still in existence. Through the kindness of the Rev. John Johnson of Charleston, the writer was permitted to have access to some of the Records of the old parishes of Prince Frederick's and St. Thomas. Some of these still exist in a remarkable state of preservation, while others are fast going to decay. It is to be hoped that efforts will soon be made to have these important historical materials rescued from destruction. It may not be uninteresting to subjoin one or two extracts from these Records, kindly furnished by the Rev. Mr. Johnson.

"Complaint made that the widow Hughes a poor woman living near the church was a starving she and children/ agreed this day that the Wardens take the Two Bigest Children and Put them out apprentices in creditable houses and that the Widow go to work to maintain herself and young child as she is very able & a Great deal of spinning offered her."— 27 Sep 1777.

"Agreed that Margaret Marten shd. be allowed £10 pounds pr week for her maintenance and cloathing at the expense of John McNight her son."—20 May 1779."

parishes united in sending delegates.* It must not be presumed that the parishes, when first created, were complete political divisions of the province. Far from it. Their importance and status in this regard were acquired years after their erection. Their growth from ecclesiastical to political divisions was, however, gradual and sure. From a territorial division for church purposes, they slowly passed into a political division possessing many of the attributes of a self-governing community.

The early legislators of the colony were deeply impressed with the importance of local education.† So dominant was this idea that it had much to do with the establishment of the Church of England in the province, and the division of the counties into parishes in order to obtain aid from the society for propagating the Gospel in foreign parts. This society, which was established in the mother country, only lent its aid to those colonies in which flourished the Episcopal church. The society soon seconded the efforts of the colonial educators, and lent its aid in supplying parish ministers and teachers. Parochial libraries were founded and parish schools were established, at first under the immediate control of the vestrymen.

The history of popular education in South Carolina dates from these beginnings. As far back as 1712, a free school

* Statutes at Large of South Carolina, Vol. III, pp. 50-55.

By the provision of this act, the parish of St. Philip's, Charlestown, sent five members; Christ Church, two; St. John's, three; St. Andrew's, three; St. George's, two; St. James', Goose Creek, four; the parishes of St. Thomas' and St. Dennis', three; the parish of St. Paul's, four; St. Bartholomew, four; St. Helena, four; and St. James', Santee, with Win-yaw, two.

† No view is more erroneous than that which represents the lack of educational facilities in South Carolina during colonial days. Mr. McMaster, in his recent work on the History of the People of the United States, says that in no colony was so little attention paid to education as in South Carolina. It is pleasant to note the letter of Colonel Edward McCrady, Jr., of the South Carolina Historical Society, in the *Nation*, July 5, 1883, disproving Mr. McMaster's statement.

was established in Charleston. Similar institutions were planted at Dorchester, Childsburly, Beaufort, Ninety-Six, St. Thomas' Parish, St. James (Santee) and elsewhere. Many of these schools owe their origin to legacies bequeathed them by generous parishioners, like Beresford, Ludlam, Childs, and others. With the growth of primary education, the demand for the higher education increased, resulting in the establishment of several academies and no less than five colleges before the expiration of the eighteenth century. Many charitable societies also maintained schools, usually for the education of the poor. Constant public encouragement was given to education by donations, immunities, and by vesting, in school boards, escheated property in villages or parishes. In some cases, especially during early times, even slaves were taught to read.* The parishes were confined to that portion of the State which was first settled—the region near the coast—but they gradually increased in number.

In some instances plans for settling new parishes were based on the *hundred*. The method is thus described by Ramsay: † “According to a new plan, adopted in England, for the more speedy population and settlement of the province, the governor had instructions to mark out eleven townships in square plats on the sides of rivers, consisting each of twenty thousand acres; and to divide the land within them into shares of fifty acres for each man, woman, and child that should come to occupy and improve them. Each township was to form a parish, and all the inhabitants were to have an equal right to the river. So soon as the parish should increase to the number of an hundred families they were to have a right to send two members, of their own election, to the assembly, and to enjoy the same privileges as the other parishes, already established. Each settler was to pay four shillings a year for every hun-

* Carroll's Historical Collections of South Carolina, Vol. II, pp. 538-568.

† History of South Carolina, Vol. I, pp. 108-109.

dred acres of land, except the first ten years, during which term they were to be rent free. Accordingly ten townships were marked out, two on river Altamaha, two on Savannah, two on Santee, one on Pedee, one on Wacamaw, one on Wateree, and one on Black river."

Contemporary with the adoption of the parish system was the creation of the patrol.* It was a sort of police of the parishes. Its objects and functions are best set forth in the preamble to the Act establishing it, passed November 4, 1704. The Act is entitled "An Act to settle a Patrol."† It thus states the object of the patrol: "Whereas on the sight or advice of an enemy it will be necessary for the safety and defence of the inhabitants of this Collony to draw together to the sea coast, or such other place as the Generall shall direct, all the forces thereof; to prevent such insurrections and mischiefs as from the great number of slaves we have reason to suspect may happen when the greater part of the inhabitants are drawn together," etc. In the early days of the province, constant petty expeditions were fitted out by the Spaniards from Saint Augustine against Charleston, and, in retaliation, by Charleston against Saint Augustine. Soldiers were therefore kept constantly employed in defending the coast. The large number of slaves in the province made it extremely dangerous to leave the wives and children of the soldiers unprotected from servile insurrection. The patrol was therefore, in its inception, a homeguard. Its organization, with some modifications, lasted through the lights and shadows of almost two centuries of slavery. The patrol provided themselves with horses, pistols, and guns, and were ready to appear on duty at any alarm. Under the direction

* According to Skeat, the word patrol is from the old French verb *patrouiller*, to paddle. There is no connection, however, between the word and the peculiar method of corporal punishment which it suggests. The verb is formed from the noun *patte*, the paw or foot of a beast, and hence it came to mean a going of the rounds.

† Statutes at Large of South Carolina, Vol. II, pp. 254-255.

of their captain, they rode from plantation to plantation and arrested all slaves on the road who were found without a pass from their owner. The student of English constitutional history will not be slow to recognize in the patrol the *straet-warden* of the king's highway. Like its old English prototype, the patrol could not maltreat a prisoner, and was, moreover, answerable before the law for good behavior.

From what has previously been said it will be inferred that the parish of South Carolina is of English and not of French origin, as is often stated. The parish of South Carolina and the parish of Louisiana are radically different. The Louisiana parish corresponds to the county in other States. The South Carolina parish was a subdivision of the county, and in character more nearly approached the Northern and Western township. It is true that, after the revocation of the Edict of Nantes, large numbers of Huguenot refugees came over to the province. A majority of the inhabitants of the parishes of St. Dennis, in the Orange quarter, and St. James, on the Santee, was composed of French settlers. But they did not arrive until the English were firmly established elsewhere in the Carolinas. Besides, the English were too jealous of the French to allow them any influence at all, and for a while excluded them from the legislature. This spirit of intolerance in time passed away. The proprietary government, having become burdensome to the people, was overthrown in 1719, and the people put themselves under the direct control of the King. The parishes continued to extend their organization. Charleston remained the centre of political power. Here was the provost marshal, or sheriff of all the province, and here also, for a long time, was held the only court. But a change was destined to ensue. Already the division between North and South Carolina had taken place.* The colony was soon to become the seat of a struggle between two oppos-

*The division was formally made about 1729, but it had practically existed many years before.

ing systems of local government. One of these systems represented the old Teutonic idea of the township as it was afterwards merged into the parish; the other was the later county system. It is noteworthy that the two systems of local government which have struggled for the mastery in this country, should have so early encountered each other in South Carolina.

THE DISTRICT.

Until near the middle of the last century the inhabited portion of South Carolina was confined to the parishes which fringed the coast. After the overthrow of the proprietary government and under the more immediate management of the Crown, a steady stream of immigration poured in from the old country. The new comers were principally composed of English, French, and Irish, with a few Scotch, all of whom settled in the parishes. At the same time, the northern portion of the colony was rapidly settled by an entirely different class of people, colonists from the present Middle States, from Virginia and North Carolina. The settlements of these sturdy pioneers were confined to the mountain regions and to the fertile valleys of the interior. A wide space of intervening territory separated them from the inhabitants of the parishes. The sections of the colony became, to all practical purposes, two distinct colonies. This was most unfortunate and became the seed of much discontent in after years.* The lower section was rich, strong, and powerful. It possessed some good schools, many intelligent men, and an attempt at local government. In its constitution and character it approached the colonies of New England and Virginia. The upper section more nearly resembled a Western territory of the

* Indeed the local disputes between the "up country" and the "low country" still survive in many instances, though not with the same degree of animosity as in former times.

present time. It was largely composed of rough pioneers, who, dissatisfied with their condition in the older colonies, had removed to this unexplored portion of South Carolina.

Some effort was made as early as 1725 to establish county and precinct courts, but the general court in Charleston soon absorbed all judiciary proceedings.* For many years there was but one sheriff for the whole colony, and he held his office by patent from the Crown. He was subjected to the same penalties as a sheriff in England. At this time all civil and criminal cases were tried in Charleston by the general court. The justices of the peace could have no jurisdiction in any cause which involved more than twenty pounds. A court of chancery, consisting of the governor and a majority of the council, had been established in 1721.† There were also two other courts: a court of the King's bench and common pleas, and a court of vice admiralty. But the general court at Charleston was the most powerful judicial assembly of the colony. All criminal, as well as all civil cases, were tried in this court, a fact which necessarily produced much inconvenience and disorder. To punish a horse-thief or prosecute a debtor one was sometimes compelled to travel a distance of several hundred miles, and be subjected to all of the dangers and delays incident to a wild country. For the purpose of expediting the administration of justice and of summarily punishing criminals, the settlers began to organize themselves into bands and, under the name of "regulators," endeavored to control local affairs. Alarmed at these proceedings, the colonial government manifested some disposition to improve the condition of the colonists of the upper section.

In the preamble to an Act entitled "an Act for establishing Courts, building Gaols and appointing Sheriffs and other officers for the more convenient administration of justice in

* Brevard's Digest, Vol. I, pp. v-xx. Ramsay, Vol. II, pp. 125-159.

† Statutes at Large, Vol. III, p. 284.

this Province," * passed in 1768, the Assembly thus organizes the defective system of government for the up-country: "whereas, the establishing courts, building gaols, and appointing sheriffs in different parts of this Province, under proper regulations, will tend to promote the interests of our most glorious Sovereign and his good subjects therein, also to preserve their just rights, liberties and properties and the public peace, inasmuch as the distance from Charleston of many persons who, however remote from thence, are often obliged, either as parties, jurors or witnesses, to attend the courts at present held there for trial of all criminal causes and of all civil actions exceeding the value of twenty pounds current money . . . which hardships deter numbers of people from becoming inhabitants of this Province, etc." The Assembly then proceeded to create new district courts at Beaufort, Georgetown, Cheraws, Camden, Orangeburgh and Ninety-Six. The title of provost marshal was purchased from its holder for the sum of £5,000 sterling, and seven new sheriffs were appointed, one for each new district and one for Charleston.†

The courts held in Charleston were not Circuit Courts. Brevard regards them in the same light as "the Courts of Westminster Hall in England." In the new Circuit Courts the judges could render a decision, in some small cases, without a jury, provided both litigants agreed to this summary method of settling their dispute. The right to a trial by jury, however, was not denied. The creation of the district courts and of the district was the historic origin of local government in the up-country, although the inhabitants of the district did not even possess the right of electing their own sheriff.

Owing to the vast size of the district, the same evils that had been experienced under the old judicial system began to make themselves felt with the increase of population.

* Statutes of South Carolina, Vol. VII., 197-205.

† Ramsay.

Accordingly, steps were soon taken to improve further the administration of the judiciary by decreasing the size of the districts. It was now that the constitutions of the older colonies began to exert their influence on South Carolina. The General Assembly, at its session in 1783, considered the propriety of dividing the districts "into counties of convenient size, of not more than forty miles square, unless where the number of inhabitants and situation of the lands require some deviation."* Commissioners were appointed for each district, whose duty it was to "fix and ascertain" the boundary lines of each district and county. Two years later, in 1785, the districts were divided into thirty-four counties, as follows: NINETY-SIX into the counties of Abbeville, Edgefield, Newberry, Laurens, Union and Spartanburgh; CAMDEN district into the counties of Clarendon, Richland, Fairfield, Claremont, Lancaster, York, (new acquisition) and Chester; † CHERAWS into Marlborough, Chesterfield and Darlington; GEORGETOWN into Winyaw, Williamsburgh, Kingston and Liberty; CHARLESTON into Charleston, Washington, Marion, Berkeley, Bartholomew and Colleton; BEAUFORT into Hilton, Lincoln, Granville and Shrewsbury; and finally ORANGEBURGH district was divided into Lewisburgh, Orange, Lexington and Winton counties. ‡

The county system was introduced through the influence of Henry Pendleton, a settler from Virginia, and was closely modeled after the county system of that colony. || Seven Justices of the Peace were elected for each county by the General Assembly, and court was held by them every three months. § They held their office during good behavior, and filled all vacancies in their number by co-optation. Three

* Statutes at Large, Vol. IV., p. 561.

† The influence of Pennsylvania is seen in the names of the counties.

‡ Vol. IV., pp. 661-664.

|| Ramsay.

§ O'Neill's Annals of Newberry District, pp. 12-22.

of the justices constituted a quorum. The county courts never extended to the parishes. The Episcopal Church ceased to be the established church of South Carolina when the British government in America was overthrown by the war for independence. The parish system, however, was still retained by the inhabitants of the low-country. All the political power and patronage were still wielded by the inhabitants of the parishes, and the up-country possessed no influence whatever. By the constitution of 1776, the low-country was allowed twice the number of representatives enjoyed by the up-country, though the latter was perhaps the more populous. This privilege produced much dissatisfaction.

After an experiment of a few years, the county system and the county courts were abolished. The name of "district" was substituted for that of "county," and this form was preserved until after the close of the civil war. With the increase of population and education, the districts gained the privilege of electing some of their own local officers, such as sheriffs and clerks of courts. The general economy of the district differed little from that of the county in other States, with the exception of the absence of a district court. The districts were grouped into judicial circuits, and the circuit judge traveled from one court of his circuit to another.

The manifest injustice in the distribution of the power and representation of the State continued to produce much dissatisfaction in the up-country. By the constitution of 1790 the cause of contention was in a measure adjusted. Each district was allowed one senator and two or three representatives. But even this concession on the part of the low-country was far from being entirely satisfactory to the inhabitants of the districts, for it still left them with a minority representation, though possessing a much larger population. Each parish was allowed to send a senator to the assembly, and Charleston was allowed to send two, one for each of the parishes of Saint Philip and Saint Michael. Each parish also

sent two or more representatives to the assembly.* The parishes steadily opposed any increase of power on the part of the districts. The districts were equally determined to secure a more equitable apportionment of representation and a more equal share in the government. Again and again unsuccessful attempts were made to effect a harmonious settlement of the dispute. The capital was in time moved from Charleston to the new town of Columbia in the interior.† By an amendment to the constitution, in 1808, the house of representatives was made to consist of one hundred and twenty-four members, half of whom represented the white population and half the taxables.‡ The constitution of the senate remained unchanged. The senate was therefore controlled by the low-country and the house of representatives by the up-country. As the governor, the judges, and all other important officers were appointed by the assembly, the provisions of this amendment were readily accepted by both sections of the State. A sort of double government was instituted. Part of the public officers resided in Charleston and part in Columbia. There was a treasurer for the low-country and one also for the up-country, and, with very few modifications, this system was preserved until after the close of the civil war. The organization of the district was preserved in the up-country and that of the parish in the low-country.

After the close of the civil war, in obedience to the proclamation of President Johnson and the orders of Provisional Governor Perry, a convention of the people of South Carolina assembled in Columbia September 13, 1865, to re-organize the State government. The ordinance of secession was repealed and a new constitution adopted. Many of the changes in the constitution and improvements in the methods of

* Constitution of 1790, Article I., sections 3-8.

† The act for laying off the town of Columbia and erecting the new State buildings therein was passed by the assembly March 22, 1786. See Statutes of South Carolina, Vol. IV., pp. 751-752.

‡ Amendment of 1808. Also Calhoun, Vol. I., pp. 402-406.

local government were suggested by Governor Perry in his message to the convention.* "The great political convulsions which have taken place in the Southern States," said he in his message to the convention, "and the terrific war which has swept over South Carolina, devastating her territory and depriving her citizens of all civil government, are too well known to you, and too painful in their detail, for me to bring them unnecessarily in review before you. Instead of dwelling on the past, and grieving over its errors and misfortunes, let us, with manly fortitude, look to the future, and accommodate ourselves to the circumstances which surround us, and which cannot be changed or avoided. The President of the United States has manifested a generous and patriotic solicitude for the restoration of the Southern States to all their civil and political rights, under the Constitution and laws of the United States. He desires to see the Federal Union reconstructed as it was before the secession of those States; and he will oppose the centralization of power in Congress, and the infringement of the constitutional rights of the States, with the same zeal, energy and power with which he resisted the assumed right of secession on the part of the States. In order to accomplish this re-union of the States, the President desires that South Carolina, as well as all the other States in rebellion, should accept as inevitable and unavoidable the great final results of the war."

The parishes were abolished and the district system was extended to the low country. The triumph of the district over the parish was complete when Charleston district, instead of the parishes of Charleston, sent its delegation to the assembly. Boundaries of the judicial and election districts remained unchanged. The semi-duplicate form of State government was abolished and provision was made for only one treasurer with his office at Columbia. Slavery was forever prohibited in the State; the "freedmen," however, were not enfranchised.

* Message No. I, Journal of the Convention, pp. 11-19.

Governor Perry thus speaks of the aristocratic character of the government of South Carolina: "The general assembly of South Carolina is an electoral college for the State as well as a legislative body. They have the election of Governor; electors of President and Vice-President, Lieutenant Governor, United States Senators, Judges and Chancellors, all State officers, Magistrates, Commissioners of Roads and Bridges, Poor and Free Schools, Commissioners and Masters in equity, and various other officers. This embarrasses legislation, occupies a great deal of the time of members, and is productive of evil consequences. The most of these elections and appointments should be taken from the legislature." *

Acting upon this wise suggestion, the power of the legislature was greatly diminished. Many of the officers who had formerly been appointed by the legislature were made elective. Local government was also greatly increased. The period embraced by the operation of this constitution is, however, so short and so full of the anarchy and disorders engendered by the great civil conflict as to be almost devoid of any local government.

THE COUNTY.

The county system is the present system of local government for the whole State of South Carolina. By the constitution of 1868, commonly known as the reconstruction constitution, the district was abolished and the county erected in its stead.† Various amendments have been made to the con-

* Journal of Convention of 1865, page 15.

† This constitution was framed by a convention (called under the reconstruction acts of Congress by Major-General Canby). It assembled at Charleston, January 14, 1868, and completed its labor March 17, 1868. The constitution was submitted to the people April 14 and 16, 1868, and was ratified by 70,000 against 27,288 votes. It may further be added that the "freedmen," who voted at the election, were unanimously in favor of the constitution. See Charters and Constitutions, Part II., p. 1646.

stitution since that time, especially since the overthrow of the reconstruction government, but the main features of the county system remain the same now as when first adopted. Without commenting on the particulars of these changes, it may be best to give some account of the operations of the county system in the State; to enumerate the officers and their respective duties, and briefly to describe the other characteristics of local government as it exists in South Carolina at the present day.

The entire State is divided into thirty-four counties, which are bodies politic and corporate, and can sue and be sued.* They also possess many other rights which are usually enjoyed by corporate bodies. Each county, with the exception of Charleston, sends one senator to the State Senate. In Charleston there still remains a faint survival—more traditional than real—of the old parish system. That county is, therefore, entitled to two senators, one for each of the old parishes of St. Philip's and St. Michael's. The present house of representatives consists of one hundred and twenty-four members, who are apportioned among the several counties according to the population in each. Some counties send to the house of representatives two, others five, and Charleston as many as eighteen members. Both senators and representatives are elected by the qualified voters of the county, and each receives a salary of five dollars per diem during a session of the assembly. They are also entitled to mileage at the rate of ten cents a mile for the distance travelled in going to and from the meetings of the assembly. A senator serves for four years and a representative two years. The following officers are also elected by the people: a sheriff, a clerk of the Court of Common Pleas and General Sessions, a judge of probate, a school commissioner, three county commissioners and a coroner.

* General Statutes of South Carolina, 1882, pp. 182-326.

Except the municipalities, there is no political division of the State beyond the county. The township exists barely in name. There is no assembly of the inhabitants of the county for the discussion of local business. The county commissioners have jurisdiction over all roads, ferries and bridges. These commissioners also control all matters relating to taxes, disbursements of money for county purposes, and all other business pertaining to the internal improvement and local concerns of the county. Each township constitutes a highway district, the superintendent of which is appointed by the county commissioners. Each highway district is expected by law to be divided into sections of from two to five miles, and in each section an overseer of roads is required to be appointed by the superintendent of highways. All able bodied men between the ages of sixteen and fifty years are liable to road duty. They must work on the roads not more than twelve nor less than three days yearly, or instead pay one dollar a day for each day required. In every county there is provided a poor house, with a farm, for the accommodation of the pauper class. The county commissioners are the overseers of the poor, and provide employment and comfort for the inmates of the poor house. The commissioners bind out poor children, and may also send all pauper lunatics, idiots, and epileptics to the State lunatic asylum.

The school commissioner has a general oversight of the free schools in his county. The city of Charleston constitutes an exception, having her own superintendent of schools. The school commissioner and two other persons appointed by the State board of examiners constitute a county board of examination, and examine all applicants for teachers' positions. In each school-district three men are appointed by the county board of examiners, who constitute the trustees of the district. An annual tax of two mills is levied by the county commissioners for the support of free schools. The money raised by the tax is distributed among the school districts in proportion to the number of pupils attending the free schools.

The county in South Carolina differs from the county in many other States from the fact that it possesses no judicial organization of its own. We have already seen that two unsuccessful attempts were made to introduce the county courts into the State in early times. But the system failed from various causes. The counties, like their institutional predecessor, the district, are grouped into judicial circuits, and a judge is elected by the legislature for each circuit. In each circuit there is also a solicitor, who is elected by the qualified voters of the circuit. The governor, with the advice of the senate, appoints a number of trial justices for each county. Their number depends entirely upon the demands of the county. The justices hold their office for two years and have jurisdiction over offenses in which fine or forfeiture is under one hundred dollars and imprisonment is less than thirty days. Trial justices appoint their own constables.

The jurisdiction of the court of the probate judge is very limited in character. It only extends to those matters testamentary and administrative which cannot be conveniently decided in the other courts. It also has jurisdiction over all business pertaining to minors and the allotment of dower, and in cases of larceny. The following county officers are appointed by the governor: the auditor, the treasurer and the master in equity. The present system of local government is far from being a satisfactory one to the inhabitants of the State. Many of the counties are very large, which makes it exceedingly inconvenient to those who live at a great distance from the county seat. The results are bad roads, worse bridges, and an imperfect system of free schools—a system which lacks the stimulating support of local taxation.

There is a growing demand for an improved system of local administration. This desire manifests itself in various ways, although a constitutional amendment looking towards the reduction of the size of the counties was lately defeated. A step in the right direction was taken by Governor Thompson, in his inaugural address, where he strongly advo-

cates local taxation for the support of the free school system.* A bill looking to that end was rejected in the senate in 1882. No better comment upon the rejection of this measure can be made than that already expressed by the *Charleston News and Courier*: "It was a mistake, we think, to reject the senate bill permitting the levying of local taxes for educational purposes to supplement the proceeds of the State tax. The general tax cannot be increased. It is as high as the people can bear, but each locality, knowing its own needs and its own ability, should be free to raise an additional fund under authority of law if it desired to do so."†

The future development of local government in the State will be in the direction of local support of the free schools. Local control will follow close upon local support. In other words, the school house will be for the new South Carolina what the church was for old South Carolina and for New England, namely, the parent of local self-government. When once the advantages of local support for schools are seen in the greatly improved condition of southern education, the system will extend to the local control of the poor, the roads, the bridges, and all other common affairs now under the control of the townships throughout the West.

Such is the outlook for local government in South Carolina. Historically, the parish, the district and the county are inseparably connected. They approach, meet, and overlap each other in the two centuries of South Carolina history. Everywhere they identify themselves with those principles of self-government, the continuation of which has made the English race what it is in the Old World and in the New.

* Those who have read Governor Thompson's reports on free schools while he was Superintendent of Education, will know that this idea of local taxation for free schools is strongly urged.

† *Charleston News and Courier*, December, 1882.

Free Schools in South Carolina.*

It is often urged as a matter of reproach that the more Southern colonies of our Union failed to establish common schools, while their sister colonies were earnestly striving to provide for the general enlightenment of the population; that the Southern States continually discouraged school-establishment, and that, on the whole, the Southern people are opposed to the entire system of common school education. Now this is a grave charge. If it can be supported by sufficient evidence, one might almost call it a crime on the part of the Southern people. Indeed, it would be something extraordinary and almost paradoxical, if, in an English colony and among English parishes, men could be found opposing the education of their fellows of the same race and blood. It would be something anomalous in the annals of the English people. A recently deceased Baltimore newspaper once published the astounding fact that "no such thing as free schools were known in the South before the late war, and that the oldest of them have only been in existence for a few years!"

As a matter of fact, schools for the education of the people were among the earliest institutional germs in the Southern States. To discover these germs, we have only to look into the early legislation of South Carolina. This particular State

* *Authorities.*—Statutes at Large of South Carolina. Acts of the General Assembly. Ramsay's History of South Carolina. Simm's History of South Carolina. Dalcho, Episcopal Church in South Carolina. Reports of the Superintendent of Education. Mayor Courtney, Education in South Carolina. Carroll's Collections.

is taken as an example, not because common schools have no history in other Southern States, or because the State of South Carolina has done any more in this direction than any of her neighbors. Perhaps other States have furnished as good a record, and some may have done even more for popular education. But inasmuch as the old institutions and customs of the mother country were so perfectly reproduced in South Carolina ; and, further, because from South Carolina so many other Southern communities have gone forth ; and, lastly, because her public policy and history have so often been the public policy and history of the whole South,—a sketch of free-school legislation in South Carolina may serve as a typical sketch of the beginnings of Southern education.

Of course, certain peculiar circumstances and local conditions must be taken into account in such a study as is proposed. The effect of climate upon the habits, customs and industries of communities should be remembered. The state of society must be examined. And especially should be noted the nature of the chief occupation of the inhabitants. Indeed, these things must be investigated in the study of any social question, and it is highly necessary in considering the question of free schools.

The climatic influences on the early settlers of South Carolina are at once seen by the tendency of the people to engage in rural pursuits. From the earliest times, the principal occupation of the people was agriculture. Experience has abundantly shown that the exclusive pursuit of this industry is unfavorable to the general diffusion of knowledge. *Pagan* and *heathen* still suggest by their etymology the characteristic ignorance of the rural population in classic Italy and in mediæval Europe. Even in our own time and generation, we look to the great centres of population and of wealth for the higher development of systems of education. In such communities the people are collected together and their children can be conveniently educated. Moreover, there is the additional advantage, in such communities, of obtaining that superior train-

ing which only the friction of ideas can give. Until very recently, little attention has been devoted in South Carolina to manufacturing interests. In almost all Southern communities, manufactures, as such, from the very nature of English colonization in that section, were almost totally neglected, and it may be seriously questioned whether they will ever be extensive in the South. From the pursuit of agriculture to the almost total exclusion of any other occupation, the growth of municipalities was slow. One should not expect, therefore, to find that the development of the common school system in South Carolina was as rapid as in other colonies where the industries of the people were more varied. It goes without saying that it would be absurd to compare the growth of free schools in the manufacturing communities of New England with the free schools of the agricultural communities of the South, and thereupon urge that the one section upheld the system, while the other opposed it. Rather let the comparison be made, if made at all, between the free school system of the South at one period of history, and the free school system of the South at another period.

As to the social aspect of our study, it may be said that slavery existed in South Carolina from very early times. This fact prevented the growth of a strong middle class out of whose ranks the patrons of common schools are so strongly recruited. The common people which was generated in South Carolina was that hybrid of slavery and freedom, known in provincial language as the "poor white trash." This class was perfectly contented so long as it maintained a questionable superiority over the negro, and so long as nature afforded it a means of subsistence without toil, without money, and without price. The semi-tropical climate of the South afforded ample means for satisfying human wants by hunting and fishing. Poaching prevailed on the remote lands of the planters, and thus the "poor white trash" eked out an existence as precarious as that of the Indian, and cared as little as the savage for education and restraint. Little

could be done, therefore, in this direction by common schools. Of course, little effort was made to educate the slaves, though, as we shall presently see, the attempt was successfully made in the early days of the colony.

But if the agricultural pursuits and social condition of South Carolina had such an influence upon its educational economy, the very nature of the agricultural pursuits contributed largely to render the school system different from other systems. It is easy to conceive of the evolution of an almost perfect system of free schools in those communities where only a small farm is amply sufficient to support an entire family. In such communities of small farms, with dwellings in sight of each other, the children can conveniently and safely attend school. The case was entirely different in South Carolina. From the very first settlement of the colony, there was a constant tendency on the part of the settlers to occupy large plantations. After the introduction of great staples, such as cotton and rice, this tendency increased.

The growth of towns, with all their good effects upon free schools, was a small factor in the educational history of South Carolina. Indeed, there was scarcely any town worthy of the name outside of Charleston. All life was spent on the plantations, and education was carried on to a great degree by the employment of tutors. Having thus described the early social and industrial condition of the State, we are better prepared to investigate the origin and growth of the free school system in South Carolina.

The history of free school legislation in South Carolina naturally divides itself into four periods, embracing nearly two centuries. Each period, while greatly differing from the others in length and characteristics, is closely connected with all the rest. (1). The first is the colonial period, and represents the first efforts of the early settlers to provide for the education of the masses. (2). The second period extends from 1811, when the benefits of free schools were extended to the districts, and a more general system was established, to the

close of the civil war in 1865. (3). The third period covers that dark chapter in the history of the State commonly called the reconstruction period. (4). To the fourth and last division belongs the growth of the free school system in the State since the downfall of the carpet-baggers' *régime*, in 1876. As it is our purpose to consider more especially the germs of free schools in South Carolina, more attention will be paid to the first of these periods than to any other.

It was but natural that in Charleston free schools should first take root and flourish. It was at first the only town in the colony. It was here that the poorer classes were found in larger numbers than in the rural localities. About the beginning of the last century a society was formed in London for the purpose of propagating the gospel in foreign parts. It lent its support principally to those colonies where the Episcopal church was the established order. From the fact that the Church of England was the established church of South Carolina, it received liberal aid from this charitable society. It is interesting to observe, in contemporary writings, the interest which the early parishes manifested in local education, and also the encouragement which they gave to it.

In 1705, the Reverend Samuel Thomas, a missionary of the above society, speaks of Goose creek parish in South Carolina: "The number of heathen slaves in this parish I suppose to be about 200; twenty of which I observe to come constantly to church, and these and several others of them well understanding the English tongue and can read." Of another parish he remarks: "I have here presumed to give an account of one thousand slaves belonging to our English in Carolina, so far as they know of it, and are desirous of Christian knowledge, and seem willing to prepare themselves for it, in learning to read, for which they redeem time from their labour. Many of them *can* read in the Bible distinctly, and great numbers of them were learning when I left the Province." Further, in the same memorial, Mr. Thomas says, "South Carolina is but an infant colony, and their treasury at best but small, out

of which they have, at present, appropriated 2,000 pounds to the service of the church, for the building six churches and as many parsonage houses, and buying glebe land ; so that for every particular parish the publick disburse three hundred and thirty-three pounds, and £50 annually for all the six parishes ; which, considering their present circumstances, is very extraordinary, and perhaps such instances of zeal can hardly be paralleled in these parts of the world."

The seeds of free schools planted by the charitable society of London, and nurtured by the people of the colony were not slow in maturing. In 1712, a free school was established in Charleston, through private donations, and the legislature was its especial guardian. It appears that it was the object of this school, not only to furnish its pupils with a classical education, but to teach writing, arithmetic and merchant accounts. In order to encourage private donations, it was enacted that any person giving £20 could nominate a scholar to be taught free for five years. The master, in addition to enjoying the use of the lands, houses, and other property of the school, received a salary of £100 per annum. He was required to teach, without charge, twelve scholars, who were appointed by the commissioners of the school. The same act went further in establishing schools. It fixed a donation of £10 annually on each parish schoolmaster, and empowered the vestry of each parish to draw upon the public receiver for £12 in order to defray the expenses of building the parish school.

The first royal governor, after the revolution from proprietary misrule, was an earnest advocate of popular education, and did much to foster the growth of free schools. Many parishioners caught the growing enthusiasm and made donations for the encouragement of education. Especial mention should be made of the gift made by the Reverend Mr. Ludlam, of Goose Creek. He left his entire estate, valued at £2,000, for the foundation of a free school.

About the beginning of the last century a colony of Congregationalists, from Dorchester, Massachusetts, under the

guidance and direction of the Reverend Joseph Lord, settled in South Carolina at a place to which they gave the name of their old home in New England. With other institutions, these excellent puritans brought with them their system of free schools. An act was soon passed by the colonial legislature for founding and erecting a free school at Dorchester, in St. George's parish. The free school idea of the town of Dorchester, Massachusetts, was thus transplanted to the free school of Dorchester town, South Carolina, where town and parish were reunited.

In 1735, Richard Beresford bequeathed a large sum of money towards erecting a free school in St. Thomas' parish. Shortly afterwards, free schools were erected at Ninety-Six, Beaufort, and in St. Thomas' parish. Many other societies were chartered, having for their object the erection of free schools. Colleges were founded at Charleston, Beaufort, Cambridge, and Pinckneysville. In many instances the State vested all the escheated property of a parish or a village in the trustees of schools and academies.

It is not maintained that the State, as yet, had established any extensive system of free schools, yet it is clear that great encouragement was given to all educational efforts. The matter of regulating the schools, however, was left to the parishioners themselves. This is seen in the case of St. Thomas' parish, where at Childsbury, James Childs bequeathed £600 towards erecting a free school, and the parishioners, by local subscription, increased the amount to £2,800. These parish free schools continued to flourish by local support, and their influence was potent for the intellectual good of South Carolina.

We now come to the second period in the history of free schools in this State. This period began in 1811, when the State assumed control of the schools, and extended until 1865. The act which established this system was entitled "an Act to establish Free schools throughout the State," and provides that "there shall be established in each election district

within this State, a number of free schools equal to the number of members which such district is entitled to send to the house of representatives in the legislature of this State. In each of these schools the primary elements of learning, reading, writing and arithmetic, should always be taught, and such other branches of education as the commissioners, to be hereinafter appointed, may from time to time direct."

Every citizen of the State was allowed to send his children or wards to the free school in his district free of charge. Where more children applied for admission to a school than the same could conveniently accommodate, preference was always given to the poor children. Three hundred dollars per annum was the amount appropriated for the support of each school. The schools were controlled by commissioners appointed by the legislature. The commissioners had a general oversight of the schools in their district, determining their situation, appointing the teachers, deciding on the admission of the scholars, and drawing on the comptroller for the school money. The act recognizes the existence of other free schools at that time in the following manner: "In all districts where a school or schools are already, or may hereafter be established by private funds or individual subscription, it shall be lawful for the commissioners of the free schools, at their discretion, to unite such part or parts of the fund provided by this act for such district with such school or schools, in such manner as may appear to them best calculated to promote the objects of this act."

Free schools were thus legally established throughout the State. But in point of fact they did not exist long before an effort was made by the members of the legislature from the sparsely settled districts to abolish the whole system. This was in 1813, two years after their general adoption. The objection was that they were too inconvenient and too expensive. This argument called forth an eloquent plea for free schools by a representative from Charleston. The speech is quoted at length in Mayor Courtenay's little monograph,

entitled "Education in South Carolina." A few words will, however, illustrate the spirit of the address. Speaking of the objection to the whole free school system on account of the scattered population in one or two districts, Mr. Crofts, the representative from Charleston, thus appealed to his opponent: "Let him look back and rejoice that this institution so flourishes in the bud. Let him look forward, and anticipating the fruit which it will bear, and the bounties which it will dispense, let him recoil from the meditated blow, and throw away the axe with which he assails its roots. What will be his feelings when it is prostrate, leafless and desolate? It is urged that owing to the sparse population of one or two districts the free schools there are comparatively useless, and therefore the whole system ought to be abolished. This evil time will, of itself, remove; and what kind of influence is that which would abolish a general good in order to get rid of a partial evil? There is a cloud, Mr. Speaker, which the sun cannot penetrate — why does he shine at all? There are rocks impenetrable to the dews of heaven — why are not showers withheld altogether? There are barren places that produce nothing — why is not agriculture abandoned? No, sir, let us rejoice in the good we have done, and regret not that we cannot do everything at once."

Free schools were not abolished in South Carolina. They continued to receive the support of the State, and were managed on the same plan as when first established, only increasing in number.

In 1828, seventeen years after their general establishment, there were eight hundred and forty schools in the State and nine thousand and thirty-six pupils. Twelve years later, in 1840, there were five hundred and sixty-six free schools, with twelve thousand five hundred and twenty pupils. In 1850 there were seven hundred and twenty-four free schools in the State with seventeen thousand eight hundred and thirty-eight children attending them. The support of these schools for the same year was two hundred thousand and six hundred

dollars. At the outbreak of the civil war, in 1861, free schools had grown so rapidly that twenty thousand children attended them, and they had an annual support of more than two hundred thousand dollars.

When the men who had been engaged in the great war of secession returned to their homes in South Carolina, poverty stared them in the face. The homes of many had been destroyed by the ravages of war. The freedom of the blacks had also been proclaimed. Before their emancipation the negroes represented the wealth of the State. After the emancipation of the negroes, the embarrassing question arose how it was possible to educate three times the number of children on one-third of the money. The reconstruction undertook to answer this question. Many earnest and zealous teachers came from the North to engage in the great work. But with them came political demagogues and over-zealous reformers. They exercised little judgment. Instead of trying to secure the co-operation of the native teachers, they ignored them. The social sentiments of the people were utterly disregarded. Instead, therefore, of securing the sympathy, good-will, and encouragement of the white population, these intruders incurred righteous indignation. The corrupt administration of the "carpet-bagger" and of the negro seriously interfered with the free schools. The whole system had well nigh collapsed when the radical ring was overthrown in 1876.

As an illustration of the reckless expenditure of the school money by negro officials during the carpet-bag régime, the following example will suffice. The amount of the past school indebtedness of Barnwell county, taken from the report of the Superintendent of Education of South Carolina was :

From November 1, 1872, to November 7, 1876.	\$3,648.13
From November 1, 1876, to November 1, 1878.....	890.88
	<hr/>
	\$4,539.01

When the people of South Carolina resumed control of their local affairs in 1876-77, the outlook of the free schools

was perhaps even gloomier than at the close of the war. At that time the State was a battle-field covered, as it were, with blasted homes, smoking ruins, with the dead and wounded. But in 1877 that battle-field presented the appearance of having suffered pillage at the hands of camp followers. Much of the school fund had been squandered; the teachers were badly paid; the pupils poorly taught; the school buildings in many places were badly out of repair. More than this, a school debt of more than \$200,000 was left for the white population to pay. But the people did not despair. Earnest and energetic souls inspired them, and, with the determination characteristic of their race, the people of South Carolina slowly began the great work that lay before them. The schools were organized on a more equitable basis; the teachers were selected with more care; attention was paid to the pupils. Provision was made for the liquidation of the enormous school debt of 1877. The legislature provided that the poll tax of most of the counties should be used to extinguish the debt. Free school resources were subjected to a very severe strain, but the teachers were convinced of the honesty of the administration, and confidence was soon restored.

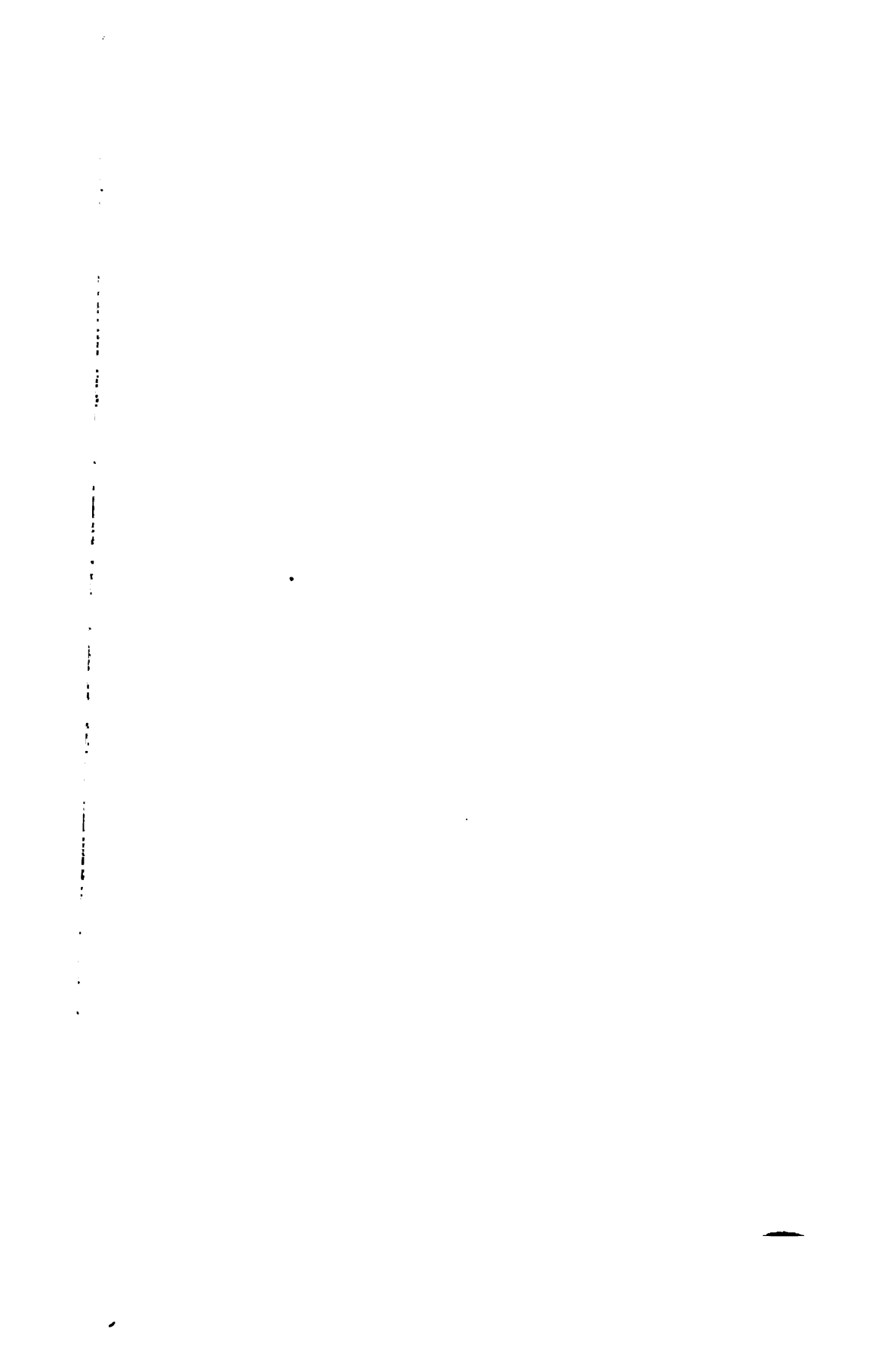
During the year 1880-1 there were 3,057 public schools in the State of South Carolina, an increase of 84 over the preceding year. The school population, white and colored, was 133,458 out of a total population of 995,577. The total number of teachers was 3,249, the average wages being \$25.45 per month for males, and \$24.48 for females. The entire amount of salaries paid to teachers during the year was \$809,855.10, and the total available school fund was \$415,108,943. These facts present a most hopeful picture for the free schools of South Carolina. This cheering outlook is largely due to the heroic efforts of the last Superintendent of Education of the State, Col. Hugh S. Thompson, now Governor of the State, who held the above educational position from the time of the overthrow of the carpet-bag government. With indefatigable zeal he revived the free

school system and gave it an impetus which, if sustained by the co-operation of the people, will be of lasting good to the State.

One of Colonel Thompson's special schemes was the organization of two Normal schools, one for white and one for colored teachers. These schools, which meet every summer, are largely attended, being free of charge. They are conducted by the best teachers and lecturers in the South and West. The expenses incurred are defrayed by the State. The good done by these Normal schools cannot be over-estimated. While quickening the teachers, they also influence the pupils and interest the whole public in the great cause in which they are engaged. In the words of the official report on these institutions: "The importance of the work will, perhaps, be better understood by all when it is known that the students of the Institute, taking the actual number as stated by them, had charge of the education of an aggregate of about 15,000 children, or, of nearly one-fourth of the white children of the State who are attending school. It cannot be too strongly emphasized that normal institutes are maintained for the benefit of the children of the State, not for the personal benefit of the teachers who attend them."

The growth of municipalities will have a powerful influence upon the growth of the free schools, and free schools will react upon the municipalities and quicken local life. A demand for the right of *local* taxation for the support of schools is already growing in South Carolina. This, however, is but a return to old colonial principles. When everywhere adopted, local taxation will be found to be of great practical benefit, not only in increasing the influence and efficiency of the free schools, but also in demonstrating to the people the great advantage of controlling all their local affairs. Cheering signs for the future of free schools in South Carolina must be welcomed, not only by the citizens of the State, but by good citizens everywhere, and by all who prefer enlightenment to ignorance, morality to vice, happiness to misery, and who honor an intelligent, upright, law-abiding people.





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